

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Case Nos. 79425 and 79526

ATHANASIOS SKARPELOS, AN INDIVIDUAL

Appellants,

v.

WEISER ASSET MANAGEMENT, LTD., A BAHAMAS COMPANY AND  
WEISER (BAHAMAS) LTD., A BAHAMAS COMPANY,

Respondents.

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WEISER ASSET MANAGEMENT, LTD., A BAHAMAS COMPANY AND  
WEISER (BAHAMAS) LTD., A BAHAMAS COMPANY

Appellants,

v.

ATHANASIOS SKARPELOS, AN INDIVIDUAL,

Respondent.

Appeal from the Judgment of the Second Judicial District Court, Washoe County  
District Court Case No.: CV15-02259  
Second Judicial District Court of the State of Nevada  
In and For the County of Washoe

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CASE NO. CV15-02259      **NEVADA AGENCY & TRANSFER CO. VS. WEISER ASSET ETAL**

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

**Pg. 1**

**APPEARANCES-HEARING**

---

1/31/19  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
T. Amundsen  
(Reporter)

**ONGOING BENCH TRIAL**

8:32 a.m. – Court reconvened.

Jeremy Nork, Esq., and Frank Laforge, Esq., were present on behalf of Cross-Claimants Weiser (Bahamas) Ltd., and Weiser Asset Management, Ltd. Mr. Christos Livadas was present with counsel Nork and Laforge.

Cross-Claimant Anthanasios Skarpelos was present with counsel Dane Anderson, Esq., and Seth Adams, Esq.

Witness **Lambros Pedafronimos** was reminded by the Court that he remains under oath; cross examined by counsel Nork.

Counsel Nork moved to have the deposition of Lambros Pedafronimos, dated October 23, 2018, opened and published; **SO ORDERED.**

Witness further cross examined.

**Counsel Nork offered Exhibit 12; counsel Anderson objected; objection sustained.**

Witness further cross examined.

**Counsel Nork offered Exhibit 12; counsel Anderson objected; objection overruled and Exhibit 12 shall be ADMITTED into evidence.**

Witness further cross examined.

**Counsel Nork offered Exhibit 11; counsel Anderson objected; objection overruled and Exhibit 11 shall be ADMITTED into evidence.**

Witness further cross examined.

**Counsel Nork offered Exhibit 18; counsel Anderson objected; objection overruled and Exhibit 18 shall be ADMITTED into evidence.**

Witness further cross examined.

10:14 a.m. – Court stood in recess.

10:33 a.m. – Court reconvened.

Witness further cross examined.

**Counsel Nork offered Exhibit 19; counsel Anderson objected; objection overruled and Exhibit 19 shall be ADMITTED into evidence.**

Witness further cross examined; re-direct examined; re-cross examined; and excused.

**COURT** advised respective counsel that the trial will now break for lunch, and will reconvene at 1:30 p.m. for counsel Anderson to present argument on his Rule 52 motion; closing arguments will be presented tomorrow morning, and the Court will most likely make a ruling tomorrow afternoon.

Counsel Nork advised the Court that while he does not have a problem with the proposed timeline for the remainder of the trial, he wants the Court to be aware that his client has a flight out of the country tomorrow afternoon.

**COURT** advised the parties that he understands Mr. Livadas and/or Mr. Skarpelos may have travel arrangements to leave the country tomorrow, and the Court will not be offended if they are not present.

JA1714

DATE, JUDGE  
OFFICERS OF

**Pg. 2**

COURT PRESENT

APPEARANCES-HEARING

---

1/31/19  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
T. Amundsen  
(Reporter)

**ONGOING BENCH TRIAL**

11:55 a.m. – Court stood in recess for lunch.

1:36 p.m. – Court reconvened.

Counsel Anderson made a motion pursuant to NRCP 52c, and he presented argument thereto.

Counsel Nork responded; and he further argued in opposition of counsel Anderson's motion.

Counsel Anderson replied; and he further argued in support of his Rule 52c motion.

2:54 p.m. – Court stood in recess.

3:20 p.m. – Court reconvened.

**COURT** set forth findings of fact and conclusions of law; **COURT DENIED** counsel Anderson's motion.

**COURT FURTHER ORDERED:** Closing arguments shall commence tomorrow, February 1, 2019, at 9:00 a.m.

Counsel Anderson advised the Court that there are some exhibits that need to be redacted, however he is not sure what the process should be for this, as some of exhibits in question have been admitted into evidence, and he does not know if redaction of an admitted exhibit is appropriate.

**COURT** advised respective counsel that this Court would be more inclined to redact an exhibit, rather than sealing the entire document.

**COURT** further advised respective counsel that the large pieces of easel paper drawn on by counsel Nork during the trial will be destroyed at the conclusion of closing arguments.

3:38 p.m. – Court stood in recess for the evening, to reconvene tomorrow, February 1, 2019, at 9:00 a.m.

MHNYMA SWIFT

APIΘΜΟΣ ΑΝΑΦΟΡΑΣ: 20121220949014E665

0542 ΑΣΤΡΟΥΣ

ΠΕΞΕ

Αρ. Εντολής: 20121220949014E665 A/A 903163 K.E. 142

Ημερομηνία 20/12/2012 Ώρα 14:06 Είδος Μηνύματος: SWIFT Κατ.Προορ. 94

\*\*\* I N C O M I N G M E S S A G E \*\*\*

-----Message Header-----  
 Swift Input :FIN 103 Single Customer Credit Transfer  
 Sender :MIDLGB22XXX HSBC BANK PLC  
 : (ALL U.K. OFFICES), LONDON  
 Receiver :CRBAGRAAXXX ALPHA BANK AE  
 : ATHENS

-----User Header-----  
 FIN Copy Service:EBA

-----Message Text-----  
 20: Transaction Reference Number  
 GBS20122H9WFO8AO  
 23B: Bank Operation Code Identification of the Option  
 CRED  
 32A: Date, Currency Code and Amount  
 20/12/2012 EUR #20.000,#  
 33B: Currency/Instructed Amount  
 EUR  
 20000,  
 50K: Ordering Customer  
 VERDMONT CAPITAL S.A.EDIF. HITECH  
 PLAZACALLE 53 OBARRIOPANAMA / PANAM  
 A  
 52A: Ordering Institution (ISO Bank Identifier)  
 MIDLGB22BHX  
 57B: Account With Institution (Branch)  
 /BRANCH 542  
 59: Beneficiary Customer  
 /GR7801405420542002101002793  
 → ELLINIKO ASTROS KYNOURIAS22001GREET  
 E  
 71A: Details of Charges  
 SHA  
 72: Sender to Receiver Information  
 /ACC/REF 46213NU01E2P  
 -----End of Message-----

Λογαριασμός Ανταποκριτή: 098003805020614  
 Κατάσταση: ΕΚΔΟΣΗ ΕΝΤ. K.E=142 20/12/2012-A0

No. CWIS-02259

Skarpelos

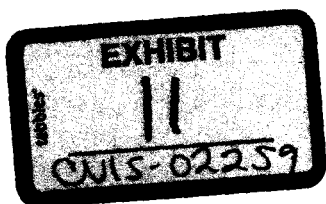
vs.

Weisenetal

Weisen Ex. 11

Admitted: 4/31, 2019  
JACQUELINE BRYANT, CLERK

By mm  
Deputy



JA1717



Message

---

**From:** Lambros Pedafronimos [l.pedaf@gmail.com]  
**Sent:** 12/21/2012 5:42:42 AM  
**To:** Christos [/O=CL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CHRISTOS]  
**Subject:** Transfer Stuck  
**Attachments:** Trnsfer.jpg

Hi Bud,

Someone forgot to include the beneficiary in the details of the transfer. Please get the the sender to contact his bank and provide the beneficiary name for the transfer to go through.

Beneficiary Name: Ntina Nikolaoy Pentafronimoy

Thanks

--

Lambros Pedafronimos



No. 0015-02259  
Skarpelos  
vs.  
Weisenhof  
Weisen Ex. 12  
Admitted: 1/31, 2019  
JACQUELINE BRYANT, CLERK  
By [Signature]  
Deputy

Message

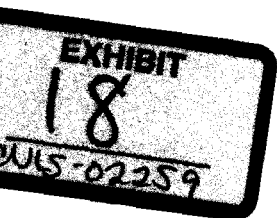
---

**From:** Lambros Pedafronimos [l.pedaf@gmail.com]  
**Sent:** 4/26/2013 9:21:32 AM  
**To:** Christos [/O=CL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CHRISTOS]  
**Subject:** Quadruple Bypass

Bank Name: Alpha Bank A.E  
Bank Address: 2, Mavrothalassiti Street, Paralio Astros, 22001  
Branch: 542  
Bank Tel: +30 27550 52466  
Beneficiary: Nikolaos Pentafronimos  
Beneficiary Address: Astros Kynourias, Arkadia Greece  
IBAN: GR78 0140 5420 5420 0210 1002 793  
Account Number: 542 00 2101 002 793  
BIC/SWIFT: CRBAGRAAXX  
US Intermediary: Bank of New York Mellon, New York, IRVTUS3N

--

Lambros Pedafronimos



No. CW15-02259  
Skarpelos  
vs.  
Weisen et al  
Weisen Ex. 18  
Admitted: 1/31, 2019  
JACQUELINE BRYANT, CLERK  
By [Signature]  
Deputy

Message

---

**From:** Lambros Pedafronimos [l.pedaf@gmail.com]  
**Sent:** 5/9/2013 1:15:38 PM  
**To:** Christos [/O=CL/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CHRISTOS]  
**Subject:** Acct/Details

Bank Name: Alpha Bank A.E

Bank Address: 2, Mavrothalassiti Street, Paralio Astros, 22001

Branch: 542

Bank Tel: +30 27550 52466

Beneficiary: Nikolaos Pentafronimos

Beneficiary Address: Astros Kynourias, Arkadia Greece

IBAN: GR78 0140 5420 5420 0210 1002 793

Account Number: 542 00 2101 002 793

BIC/SWIFT: CRBAGRAAXXX

US Intermediary: Bank of New York Mellon, New York, IRVTUS3N

--

Lambros Pedafronimos

No. CV15-02259  
Skarpelos  
vs.  
Weiser et al  
Weiser Ex. 19  
Admitted: 1/31, 2019  
JACQUELINE BRYANT, CLERK  
By [Signature]  
Deputy



1                   IN THE SECOND JUDICIAL DISTRICT COURT  
2                   OF THE STATE OF NEVADA  
3                   IN AND FOR THE COUNTY OF WASHOE

4   -o0o-

5 NEVADA AGENCY AND TRANSFER COMPANY,  
6 a Nevada corporation,

7                   Plaintiff,   Case No. CV15-02259  
8 vs.   Dept. No. 10

9 WEISER ASSET MANAGEMENT, LTD.,  
10 a Bahamas company; ATHANASIOS  
11 SKARPELOS, an individual; and DOES  
12 1-10,  
13 Defendants.

14 \_\_\_\_\_/

15 ATHANASIOS SKARPELOS, an individual,  
16  
17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD.,  
20 A Bahamas company; AND WEISER  
21 (BAHAMAS) Ltd., A Bahamas company,

22 Cross-Defendants.

23 \_\_\_\_\_/

24 Pages 1 to 225, inclusive.

BENCH TRIAL

\_\_\_\_\_

Thursday, January 31, 2019  
Reno, Nevada

Job No.: 524007  
REPORTED BY: Christina Amundson, CCR 641

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR WEISER ASSET MANAGEMENT, LTD.</p> <p>4 HOLLAND &amp; HART</p> <p>5 BY: JEREMY NORK, ATTORNEY AT LAW</p> <p>6 5411 Kietzke Lane, Suite 200</p> <p>7 Reno, NV 89511</p> <p>8 775.327.3043</p> <p>9</p> <p>10 FOR ATHANASIOS SKARPELOS:</p> <p>11 WOODBURN AND WEDGE</p> <p>12 BY: DANE ANDERSON, ATTORNEY AT LAW</p> <p>13 SETH ADAMS, ATTORNEY AT LAW</p> <p>14 6100 Neil Road, Suite 500</p> <p>15 Reno, NV 89505</p> <p>16 775.688.3000,</p> <p>17 -o0o-</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION DIRECT REDIRECT CROSS RECROSS</p> <p>4 Mr. Pedafronimos -- 123 4 142</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 EXH</p> <p>10 NO. I.D. ADMITTED</p> <p>11 12 46</p> <p>12 11 49</p> <p>13 18 56</p> <p>14 -o0o-</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 4</p> <p>1 Reno, Nevada - January 31, 2019 - 8:30 a.m.</p> <p>2 THE COURT: Good morning, everyone. Please</p> <p>3 be seated.</p> <p>4 We will go back on the record in</p> <p>5 CV15-02259, Skarpelos vs. Weiser entities. Mr.</p> <p>6 Nork, Mr. Livadas, and Mr. La Forge are present.</p> <p>7 Good morning, gentlemen.</p> <p>8 MR. NORK: Good morning, your Honor.</p> <p>9 MR. ANDERSON: Good morning.</p> <p>10 THE COURT: When we broke yesterday you</p> <p>11 were on the stand, sir, so if you would resume the</p> <p>12 stand, I'd appreciate that. And, Mr. Nork, you were</p> <p>13 going to begin your cross-examination, if I remember</p> <p>14 correctly.</p> <p>15 MR. NORK: Yes, that's correct, your Honor.</p> <p>16 THE COURT: Sir, you're still under oath.</p> <p>17 You understand that?</p> <p>18 THE WITNESS: Correct.</p> <p>19 THE COURT: Thank you.</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. NORK:</p> <p>22 Q. Good morning, sir.</p> <p>23 A. Good morning.</p> <p>24 Q. Turn please to Exhibit 7. You were asked</p>	<p style="text-align: right;">Page 5</p> <p>1 some questions on direct about your role in</p> <p>2 assisting Mr. Skarpelos in submitting his</p> <p>3 application to open an account at W.A.M.</p> <p>4 Do you recall that?</p> <p>5 A. Submitting his application, can you</p> <p>6 rephrase that a little bit?</p> <p>7 Q. The question is, You were asked questions</p> <p>8 about the role you played --</p> <p>9 A. Okay.</p> <p>10 Q. -- in assisting Mr. Skarpelos in submitting</p> <p>11 his application to open an account at W.A.M.</p> <p>12 A. Correct.</p> <p>13 Q. Correct, you were asked questions, right?</p> <p>14 A. I was asked questions, yes, okay.</p> <p>15 Q. I know it's early but --</p> <p>16 A. Yeah.</p> <p>17 Q. And one of the documents you were shown is</p> <p>18 Exhibit 7, correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. This is -- it's an email thread</p> <p>21 starting from Mr. Howard Daniels to Mr. Skarpelos</p> <p>22 and then Mr. Skarpelos responds and he cc's you.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>



<p style="text-align: right;">Page 6</p> <p>1 Q. What was your testimony yesterday about why</p> <p>2 you were cc'd on this email?</p> <p>3 A. My testimony yesterday with regards to this</p> <p>4 email was that Tom had forwarded it to me.</p> <p>5 Q. Do you know why he forwarded it to you?</p> <p>6 A. Either to print documents or send him</p> <p>7 documents or something to that effect.</p> <p>8 Q. Do you have a recollection as you sit here</p> <p>9 today what you did when you were copied on this</p> <p>10 email?</p> <p>11 A. No. I was copied on this email. That's</p> <p>12 about it. Print or communicate documents with Tom.</p> <p>13 Other than that, send them, maybe.</p> <p>14 Q. I don't want you to guess.</p> <p>15 A. No, that's about it.</p> <p>16 (Witness reviewing document.)</p> <p>17 THE WITNESS: Other than being cc'd on it,</p> <p>18 my role would be to either help Tom communicate,</p> <p>19 translate, explain stuff. That's about it.</p> <p>20 BY MR. NORK:</p> <p>21 Q. Okay. Did you know prior to this email --</p> <p>22 and this is May of 2011 -- that Mr. Skarpelos wanted</p> <p>23 you to go with him to the equity and trust office to</p> <p>24 fill out the application to open a W.A.M. account?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Prior to this email, no.</p> <p>2 Q. And this email is May 30th, 2011?</p> <p>3 A. Correct.</p> <p>4 Q. And the application was filled out --</p> <p>5 A. The next day.</p> <p>6 Q. -- the next day?</p> <p>7 A. Correct.</p> <p>8 Q. So, until 8:30 p.m. on Monday, May 30th,</p> <p>9 2011, you had no idea that you were going to be</p> <p>10 going with Tom, Mr. Skarpelos, to assist him in</p> <p>11 opening the account, correct?</p> <p>12 A. No.</p> <p>13 Q. Were you in the area?</p> <p>14 A. I was with Tom, I was Christos, I was with</p> <p>15 Stalios. It's a small community there.</p> <p>16 Q. The email says from Mr. Skarpelos in</p> <p>17 responding to Mr. Daniels, quote, I need the forms</p> <p>18 to open account with Weiser Asset Management Limited</p> <p>19 before I leave so we can deposit the Anavex</p> <p>20 certificate in that account," right?</p> <p>21 A. Okay. Uh-huh.</p> <p>22 Q. Do you know what is being referenced by</p> <p>23 "before I leave"?</p> <p>24 A. From what I recall, Tom was either planning</p>
<p style="text-align: right;">Page 8</p> <p>1 to travel back to Miami or New York.</p> <p>2 Q. Okay. And he wanted to get this done</p> <p>3 before he left?</p> <p>4 A. Correct.</p> <p>5 Q. And then it says at the end, "so we can</p> <p>6 deposit the Anavex certificate in that account,"</p> <p>7 correct?</p> <p>8 A. That's what it says.</p> <p>9 Q. Okay. And while meeting with Mr. Daniels</p> <p>10 the very next day Mr. Skarpelos handed his stock</p> <p>11 certificates to Mr. Daniels, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And was it your understanding, since</p> <p>14 you attended that meeting, that the intent was to</p> <p>15 open the account with those stock certificates?</p> <p>16 A. My understanding was that Tom was providing</p> <p>17 his certificates to Daniels of the offices of Equity</p> <p>18 Trust to fill out his account application, once the</p> <p>19 account was open for those stocks to be deposited to</p> <p>20 the account.</p> <p>21 Q. Okay. At least Mr. Skarpelos on</p> <p>22 May 31st, 2011, was giving up possession of his</p> <p>23 stock certificates, correct?</p> <p>24 A. Pardon me?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. As of May 31st, 2011, Mr. Skarpelos was</p> <p>2 giving up possession of his original stock</p> <p>3 certificates, right?</p> <p>4 A. He handed them to Howard.</p> <p>5 Q. Now, you were also asked questions about</p> <p>6 Exhibit 9. Can you turn to that, please. And your</p> <p>7 testimony, if I recall, is that you have no idea</p> <p>8 where this document came from.</p> <p>9 A. Correct. The document is mine. It's my</p> <p>10 passport. I don't recall handing it over to either</p> <p>11 Howard or the person that was there on behalf of</p> <p>12 Equity Trust to get this notarized.</p> <p>13 Q. Do you recognize the one or two signatures</p> <p>14 that are at the bottom for the Equity Trust Bahamas</p> <p>15 Limited stamp?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. But you have no recollection of</p> <p>18 giving your passport to anyone on May 31st, 2011?</p> <p>19 A. No.</p> <p>20 Q. You're not alleging that your passport was</p> <p>21 stolen?</p> <p>22 A. No, I'm not alleging it. But I was</p> <p>23 traveling with Christos all the time as well. I had</p> <p>24 his passport and he had mine.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Well, is it your testimony that --</p> <p>2 A. I never --</p> <p>3 Q. Hang on --</p> <p>4 THE COURT: Stop. Mr. Nork, I control how</p> <p>5 things happen in court. Both of you, though, need</p> <p>6 to understand -- and I'll direct this more to the</p> <p>7 witness -- let the attorney ask you the question,</p> <p>8 even if you want to disagree with some form of the</p> <p>9 question or the beginning part of it.</p> <p>10 Normally what we do is when somebody says</p> <p>11 something you don't agree with, you don't even let</p> <p>12 them finish, you just start talking. That's not how</p> <p>13 court works. So, please let Mr. Nork ask you the</p> <p>14 entire question. If you disagree with it, you can</p> <p>15 say, no, that's not what happened and give your</p> <p>16 answer. But don't answer in the middle. It makes</p> <p>17 it difficult for the court reporter to take down</p> <p>18 accurately what's said in the courtroom.</p> <p>19 THE WITNESS: My apologies.</p> <p>20 THE COURT: That's okay. Thank you for the</p> <p>21 apology, though. It wasn't necessary.</p> <p>22 BY MR. NORK:</p> <p>23 Q. Is it your testimony under oath that Mr.</p> <p>24 Livadas took your passport and made a copy of it?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. No.</p> <p>2 Q. Okay. And I will represent to you that Mr.</p> <p>3 Skarpelos has no recollection of your passport being</p> <p>4 copied either, because his position was that he was</p> <p>5 probably out for a smoke when it happened.</p> <p>6 Does that sound about right to you?</p> <p>7 A. My recollection of the event was me never</p> <p>8 handing my passport to any official representative,</p> <p>9 either Equity Trust or Weiser Asset Management.</p> <p>10 Q. Let me ask you this: Was Mr. Skarpelos</p> <p>11 present at Equity Trust Bahamas the entire time you</p> <p>12 were there?</p> <p>13 A. I don't recall. People were smoking.</p> <p>14 People were walking out of the office. I don't</p> <p>15 know.</p> <p>16 Q. How long did the meeting take?</p> <p>17 A. Ten, 15 minutes.</p> <p>18 Q. And during that 10, 15 minutes, people were</p> <p>19 coming and going?</p> <p>20 A. Yes.</p> <p>21 Q. Including Mr. Skarpelos?</p> <p>22 A. Yes.</p> <p>23 Q. But in any event it's your position that</p> <p>24 this Exhibit 9, which is a copy of -- you don't</p>
<p style="text-align: right;">Page 12</p> <p>1 dispute it's a copy of your passport, right?</p> <p>2 A. No, I don't dispute that.</p> <p>3 Q. Exhibit 9, which has the stamp -- the</p> <p>4 certified stamp of Equity Bahamas, that has nothing</p> <p>5 to do with your ability to withdraw funds out of</p> <p>6 Tom's W.A.M. account, correct?</p> <p>7 A. It's my understanding that this has nothing</p> <p>8 to do with W.A.M.</p> <p>9 Q. Okay. Including your ability to withdraw</p> <p>10 funds from Mr. Skarpelos' account when and if it is</p> <p>11 open.</p> <p>12 A. Correct.</p> <p>13 Q. Were you Mr. Skarpelos assistant?</p> <p>14 A. No.</p> <p>15 Q. You were asked questions on direct along</p> <p>16 the lines of, Are you aware that a W.A.M. account</p> <p>17 was ever approved, did you ever see W.A.M. account</p> <p>18 statements, and you answered "no" to all of those</p> <p>19 questions.</p> <p>20 If you were not Mr. Skarpelos' assistant,</p> <p>21 why would you have been copied on any of that</p> <p>22 information?</p> <p>23 A. One of my character flaws, Mr. Nork, is I</p> <p>24 help people a lot. I help everybody. If anybody</p>	<p style="text-align: right;">Page 13</p> <p>1 asks me nicely, I'll help them. So, with Tom it's</p> <p>2 always been a communication issue. If he would ask</p> <p>3 me to explain a document, if he would ask me to</p> <p>4 print something.</p> <p>5 With Christos, not a communication issue,</p> <p>6 but anything Christos would need I would do for him.</p> <p>7 The same thing with Stalios, or whoever asked me to</p> <p>8 do something for them. Drive around, go to a social</p> <p>9 event with them, pretty much anything.</p> <p>10 Q. Okay. I'm not sure that answers my</p> <p>11 question because I don't understand how it would be</p> <p>12 that you would receive or be aware of W.A.M.</p> <p>13 accounts opening, W.A.M. account statements other</p> <p>14 than just being told by Mr. Skarpelos.</p> <p>15 A. Your question is -- once again repeat it.</p> <p>16 How would I be aware of this?</p> <p>17 Q. Yes, sir.</p> <p>18 A. Well, there was never an account opened</p> <p>19 officially. So, if Tom actually had an account open</p> <p>20 at W.A.M., either him or Christos would have told</p> <p>21 me. Listen, the account opened at W.A.M., let's</p> <p>22 move forward with something.</p> <p>23 Q. Okay. So, the only way you would have any</p> <p>24 knowledge of that is if Mr. Livadas or Mr. Skarpelos</p>

<p style="text-align: right;">Page 14</p> <p>1 told you.</p> <p>2 A. Correct.</p> <p>3 Q. You weren't being copied on emails,</p> <p>4 correct?</p> <p>5 A. No.</p> <p>6 Q. Although you did have access to</p> <p>7 Mr. Skarpelos' email at least for a period of time,</p> <p>8 correct?</p> <p>9 A. In 2013 when he was in critical care, until</p> <p>10 his recovery, yes, correct.</p> <p>11 Q. Okay. But other than that time period, you</p> <p>12 weren't -- unless someone copied you on an email,</p> <p>13 you didn't have access to that email communication,</p> <p>14 correct?</p> <p>15 A. No.</p> <p>16 Q. And Exhibit 9, notwithstanding, the people</p> <p>17 at W.A.M. weren't providing you this information as</p> <p>18 to the status of any account opening, correct?</p> <p>19 A. To whose account opening?</p> <p>20 Q. Mr. Skarpelos.</p> <p>21 A. No. No.</p> <p>22 Q. Okay. Let me ask you a question about</p> <p>23 Exhibit 8. Can you turn to that, please.</p> <p>24 Were you present in the 10- to 15-minute</p>	<p style="text-align: right;">Page 15</p> <p>1 meeting that this form was filled out?</p> <p>2 A. I believe so.</p> <p>3 Q. Were you present when all the backup</p> <p>4 information attached to the back of Exhibit 8 was</p> <p>5 provided?</p> <p>6 A. I believe so.</p> <p>7 Q. Were you present when the representatives</p> <p>8 of Equity Trust Bahamas made a photocopy of Mr.</p> <p>9 Skarpelos's passport?</p> <p>10 A. I was there when they photocopied it and</p> <p>11 notarized it, yes.</p> <p>12 Q. Would you assist Mr. Skarpelos in getting</p> <p>13 either the utility bill, the letter from Alpha Bank</p> <p>14 or the credit card statement from Alpha Bank that</p> <p>15 are all attached to the back of Exhibit 8?</p> <p>16 A. I don't recall. Maybe. Maybe scanning and</p> <p>17 e-mailing them, maybe. I'm not 100 percent sure.</p> <p>18 Q. Okay.</p> <p>19 A. Maybe e-mailing them or scanning them.</p> <p>20 Q. Okay. Did you communicate with him with</p> <p>21 Alpha Bank to get the letter that is the second to</p> <p>22 last page prepared?</p> <p>23 A. What I can recall was either me printing</p> <p>24 these and providing them, I think, or in some form</p>
<p style="text-align: right;">Page 16</p> <p>1 communicating with them for Tom.</p> <p>2 Q. What do you mean by that last part?</p> <p>3 A. Either my e-mailing them to Tom or printing</p> <p>4 them, I believe.</p> <p>5 Q. Let's break that down. Did you communicate</p> <p>6 with anyone at Alpha Bank to get the letter that is</p> <p>7 the second to last page?</p> <p>8 A. I don't remember. I don't remember.</p> <p>9 Q. Okay. When --</p> <p>10 A. I wouldn't have access to Tom's bank</p> <p>11 account, so maybe it was somebody e-mailing them to</p> <p>12 me and then I printed them or vice versa with Tom.</p> <p>13 I don't remember. I don't want to say anything I</p> <p>14 don't remember.</p> <p>15 MR. ANDERSON: Your Honor, I just want to</p> <p>16 put an objection to the extent he might be</p> <p>17 speculating, if it's speculative testimony.</p> <p>18 THE COURT: The court will strike that last</p> <p>19 portion of Mr. Pedafonimos's testimony. It did</p> <p>20 seem like he was struggling to remember or trying to</p> <p>21 remember. You can ask the next question.</p> <p>22 BY MR. NORK:</p> <p>23 Q. Well, I'm really confused with the third to</p> <p>24 last page which has been testified to as being a</p>	<p style="text-align: right;">Page 17</p> <p>1 utility bill. Do you see that?</p> <p>2 A. Okay.</p> <p>3 Q. And Mr. Skarpelos' testified that the date</p> <p>4 range of this utility bill is from May of 2011 to</p> <p>5 July of 2011.</p> <p>6 A. Okay.</p> <p>7 Q. Which, obviously, is after the date of the</p> <p>8 meeting in The Bahamas for opening the account.</p> <p>9 So, my question is, Did you after the</p> <p>10 meeting on May 31st, 2011, in The Bahamas submit</p> <p>11 any additional documentation to W.A.M. for the</p> <p>12 purpose of Mr. Skarpelos completing his application?</p> <p>13 A. Sorry to interrupt you. This isn't really</p> <p>14 legible. I can't say the next -- these dates could</p> <p>15 be the next date it's going to be measured.</p> <p>16 THE COURT: Are you talking about May 18th,</p> <p>17 2011?</p> <p>18 THE WITNESS: That's what I'm looking at.</p> <p>19 But with the Greek bills they give you a date when</p> <p>20 the next account statement's going to be issued as</p> <p>21 well or when it's going to be measured and so I</p> <p>22 can't -- this isn't --</p> <p>23 BY MR. NORK:</p> <p>24 Q. Let me ask the question again, because I</p>

<p style="text-align: right;">Page 18</p> <p>1 think we got sidetracked.</p> <p>2 Mr. Skarpelos testified that this is --</p> <p>3 which is his utility bill, that this is a utility</p> <p>4 bill for the date range May 18th, 2011, to</p> <p>5 July 15th, 2011.</p> <p>6 So, my question is, Did you assist Mr.</p> <p>7 Skarpelos in forwarding this document to W.A.M.</p> <p>8 after your meeting in The Bahamas on May 31st,</p> <p>9 2011?</p> <p>10 A. I might have. I don't have any records of</p> <p>11 it. I might have.</p> <p>12 Q. And how -- after May 31st, 2011, do you</p> <p>13 have a recollection of communicating or sending</p> <p>14 information to W.A.M. and/or W.A.M.'s owners, Equity</p> <p>15 Trust?</p> <p>16 A. Like I said before, I might have, because--</p> <p>17 MR. ANDERSON: Your Honor, I just want to</p> <p>18 quickly object to the "might." I think he's</p> <p>19 speculating.</p> <p>20 MR. NORK: Well, he was about to explain</p> <p>21 before he got --</p> <p>22 THE WITNESS: No. I remember Weiser Asset</p> <p>23 Management or Tom asking me that they needed three</p> <p>24 documents for the Know Your Client procedure. I</p>	<p style="text-align: right;">Page 19</p> <p>1 don't know -- I don't remember how they were</p> <p>2 communicated, though. I honestly don't remember.</p> <p>3 THE COURT: Well, but now I'm a little bit</p> <p>4 confused. Was that on May 31st when you were in</p> <p>5 their offices or at some later time?</p> <p>6 THE WITNESS: I think it was at a later</p> <p>7 time.</p> <p>8 BY MR. NORK:</p> <p>9 Q. Okay. So, just so I understand your</p> <p>10 testimony, your testimony is at some date after</p> <p>11 May 31st, 2011, you became aware, at least, of</p> <p>12 communications from W.A.M. regarding needing</p> <p>13 additional information for the Know Your Client</p> <p>14 portion of the application.</p> <p>15 A. One more time.</p> <p>16 Q. You became aware after May 31st, 2011, of</p> <p>17 communications from W.A.M. requesting additional</p> <p>18 information to complete the Know Your Client section</p> <p>19 of the W.A.M. application.</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Okay. But as I --</p> <p>22 A. After the Know Your Client?</p> <p>23 Q. Yes, sir.</p> <p>24 A. Okay.</p>
<p style="text-align: right;">Page 20</p> <p>1 Q. But as you sit here today, you don't recall</p> <p>2 what those communications were, correct?</p> <p>3 A. I remember that documents were requested</p> <p>4 for the Know Your Client form.</p> <p>5 Q. Okay. You don't know -- how was that</p> <p>6 request made?</p> <p>7 A. Either from Tom or from Howard Daniels at</p> <p>8 W.A.M.</p> <p>9 Q. Okay. Do you have a recollection of</p> <p>10 receiving communications directly from Howard</p> <p>11 Daniels?</p> <p>12 A. No, I didn't receive from Mr. Daniels</p> <p>13 anything.</p> <p>14 Q. When you say the communication either came</p> <p>15 from Howard Daniels or Mr. Skarpelos --</p> <p>16 A. To Skarpelos and from Skarpelos to me.</p> <p>17 Q. Okay. So, if it was a Howard Daniels'</p> <p>18 request, it would have gone through Mr. Skarpelos to</p> <p>19 you.</p> <p>20 A. Yes.</p> <p>21 Q. And if it was just a Mr. Skarpelos request,</p> <p>22 it would have just come from Mr. Skarpelos to you,</p> <p>23 correct?</p> <p>24 A. If Howard Daniels had notified Tom, Listen,</p>	<p style="text-align: right;">Page 21</p> <p>1 Tom, we need these documents, and Tom asked me to</p> <p>2 help him to obtain those documents or send them to</p> <p>3 Howard, I would have helped, yes.</p> <p>4 Q. Okay. But as you sit here today, you don't</p> <p>5 recall when that happened?</p> <p>6 A. Correct.</p> <p>7 Q. Other than it may have happened after the</p> <p>8 May 31st meeting in The Bahamas.</p> <p>9 A. Correct.</p> <p>10 Q. And in this case there's been no</p> <p>11 documentation produced evidencing any of those</p> <p>12 requests, correct?</p> <p>13 A. I don't believe so.</p> <p>14 Q. As you sit here today, do you recall if any</p> <p>15 communications requesting additional information for</p> <p>16 the Know Your Client section of the application was</p> <p>17 that one request or a couple requests, if you</p> <p>18 recall?</p> <p>19 A. It would have been one request.</p> <p>20 Q. Changing gears a little bit, you also</p> <p>21 testified under direct that you had a personal</p> <p>22 account at Vermont, correct?</p> <p>23 A. Correct.</p> <p>24 Q. All right. And you funded that account,</p>

<p style="text-align: right;">Page 22</p> <p>1 according to your deposition, with 800,000 shares of</p> <p>2 Anavex stock.</p> <p>3 A. Correct.</p> <p>4 Q. What do you mean by you funded the account</p> <p>5 by 800,000 shares of Anavex stock?</p> <p>6 A. I transferred stock to Vermont with</p> <p>7 800,000 shares of Anavex.</p> <p>8 Q. Did you transfer that electronically or did</p> <p>9 you deliver a physical stock certificate?</p> <p>10 A. Electronically.</p> <p>11 Q. You have to finish --</p> <p>12 A. Sorry.</p> <p>13 Q. And I understand that when people normally</p> <p>14 have a conversation, they cut each other off all the</p> <p>15 time. And our court reporter is extremely talented</p> <p>16 but it's really hard to put down two people talking</p> <p>17 at the same time.</p> <p>18 The question is, Did you fund it with a</p> <p>19 physical stock certificate or electronically?</p> <p>20 A. Electronically.</p> <p>21 Q. Okay. Now, you would not reveal in your</p> <p>22 deposition from whom you acquired the 800,000 shares</p> <p>23 of stock.</p> <p>24 A. That is correct.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Other than to say that you acquired it in a</p> <p>2 private transaction.</p> <p>3 A. Okay.</p> <p>4 Q. So, there's no SEC record of your</p> <p>5 acquisition.</p> <p>6 A. There's no record.</p> <p>7 Q. You also testified that, although you</p> <p>8 wouldn't reveal from whom you acquired the stock,</p> <p>9 you did indicate that you acquired the stock in</p> <p>10 August of 2012, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And that --</p> <p>13 A. Pardon me?</p> <p>14 Q. That the stock was worth -- excuse me.</p> <p>15 That you acquired the stock in August of</p> <p>16 2012, correct?</p> <p>17 A. That's when I deposited, not when I</p> <p>18 acquired it.</p> <p>19 Q. Okay. When did you acquire the stock?</p> <p>20 A. In January of 2012.</p> <p>21 Q. Okay. And in 2012 that stock was worth</p> <p>22 over \$2 million, correct?</p> <p>23 A. At that time, yes.</p> <p>24 Q. Okay. Did you go down to Panama to open</p>
<p style="text-align: right;">Page 24</p> <p>1 the account physically?</p> <p>2 A. No.</p> <p>3 Q. With whom did you set up the account?</p> <p>4 A. With Taylor Houser.</p> <p>5 Q. Did you fill out an account application?</p> <p>6 A. I did.</p> <p>7 Q. Was that electronic?</p> <p>8 A. No. It was original.</p> <p>9 Q. Did you mail it to Vermont?</p> <p>10 A. Courier.</p> <p>11 Q. Okay. And where were you when you filled</p> <p>12 out the account?</p> <p>13 A. Athens, Greece.</p> <p>14 Q. And the account was held in your name?</p> <p>15 A. Correct.</p> <p>16 Q. Did Vermont have an online platform?</p> <p>17 A. They did.</p> <p>18 Q. Okay. Were you able to access funds using</p> <p>19 their online platform?</p> <p>20 A. I was not.</p> <p>21 Q. What information could you get from their</p> <p>22 online platform?</p> <p>23 A. Account statements and transactions.</p> <p>24 Q. Did they regularly send you account</p>	<p style="text-align: right;">Page 25</p> <p>1 statements in addition to the online platform?</p> <p>2 A. It was only online access. I had chosen</p> <p>3 not to receive account statements.</p> <p>4 Q. Okay. And you testified that you withdrew</p> <p>5 cash from that Vermont account.</p> <p>6 A. I testified that I withdrew via wire</p> <p>7 transfer cash to my father's account.</p> <p>8 Q. Okay. Does that mean that every time you</p> <p>9 wanted cash from that account you would sell a</p> <p>10 portion of your 800,000 shares?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. So, that each time you withdrew</p> <p>13 cash, your stock balance would be reduced</p> <p>14 accordingly?</p> <p>15 A. Correct.</p> <p>16 Q. Do you recall testifying in your</p> <p>17 deposition -- you recall your deposition, right?</p> <p>18 A. I do.</p> <p>19 Q. Okay.</p> <p>20 MR. NORK: I'd like to have</p> <p>21 Mr. Pedafronimos's deposition transcript open and</p> <p>22 published.</p> <p>23 THE COURT: Any objection?</p> <p>24 MR. ANDERSON: No objection, your Honor.</p>

<p style="text-align: right;">Page 26</p> <p>1 THE CLERK: Deposition of Lambros</p> <p>2 Pedafronimos dated October 23rd, 2018, open and</p> <p>3 published.</p> <p>4 MR. NORK: May I approach the witness, your</p> <p>5 Honor?</p> <p>6 THE COURT: You may.</p> <p>7 BY MR. NORK:</p> <p>8 Q. Can you turn, please, to page 19 of your</p> <p>9 deposition. At line 18 you were asked a question.</p> <p>10 "Question: Do you still own those 800,000</p> <p>11 shares.</p> <p>12 "Answer: I have interest in it, yes."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. So, but it's your position today that your</p> <p>16 ownership interest in those 800,000 shares you would</p> <p>17 -- you would sell portions of that stock so that you</p> <p>18 wouldn't have an interest in all 800,000 shares,</p> <p>19 correct?</p> <p>20 A. Yes. This is taken out of my</p> <p>21 misunderstanding of the question. Interest means</p> <p>22 that you have a percentage of interest in something.</p> <p>23 I mistakenly answered the question instead of</p> <p>24 answering I have less shares or a certain amount of</p>	<p style="text-align: right;">Page 27</p> <p>1 shares. I answered interest. I have an interest,</p> <p>2 yes.</p> <p>3 Q. So, when you said "yes," what you meant was</p> <p>4 "no."?</p> <p>5 (Witness reviewing document.)</p> <p>6 THE WITNESS: The question was, "Do you</p> <p>7 still own those 800,000 shares?" My answer was, "I</p> <p>8 have interest in it."</p> <p>9 What I meant to say was that of those</p> <p>10 800,000 shares, some of them were sold and I still</p> <p>11 have a position there.</p> <p>12 BY MR. NORK:</p> <p>13 Q. I get that. But you didn't just say "I</p> <p>14 have an interest in it." You said, "I have interest</p> <p>15 in it yes," right?</p> <p>16 A. Yes. That was a mistake on my part.</p> <p>17 Q. So, when you said "yes" in your deposition,</p> <p>18 what you meant was "No" correct?</p> <p>19 A. I couldn't answer I have an interest in it,</p> <p>20 no.</p> <p>21 Q. Well, you could have just answered "no."</p> <p>22 A. Of the 800,000 shares I still have shares,</p> <p>23 so I would have an interest. I think we're playing</p> <p>24 with words here.</p>
<p style="text-align: right;">Page 28</p> <p>1 Q. Well, I agree. I understood "yes" to mean</p> <p>2 yes. But your position is that when I asked the</p> <p>3 question, "Do you still own those 800,000 shares" --</p> <p>4 A. That was.</p> <p>5 Q. -- your answer today is, no, you do not own</p> <p>6 those will 800,000 shares. Is that correct?</p> <p>7 MR. ANDERSON: I'll object. I think the</p> <p>8 witness offered his explanation for what Mr. Nork</p> <p>9 perceives to be an inconsistency.</p> <p>10 THE COURT: I think at this point it's</p> <p>11 getting argumentative. I understand your point and</p> <p>12 I've reviewed the transcript and I also think I</p> <p>13 understand the witness's point. The witness is</p> <p>14 saying that he doesn't own all of those shares and</p> <p>15 he could have articulated it in a different way but</p> <p>16 he didn't.</p> <p>17 Your point is that he could have</p> <p>18 articulated it in a different way, so my</p> <p>19 understanding of the testimony both of the witness</p> <p>20 today and at the -- even considering the deposition</p> <p>21 testimony is that he owned 800,000 shares. He sold</p> <p>22 some of those shares and still owns others.</p> <p>23 I would agree with you that it's not</p> <p>24 exactly consistent with what he said during his</p>	<p style="text-align: right;">Page 29</p> <p>1 deposition but I also think you've made the point,</p> <p>2 so I'll suggest you move on.</p> <p>3 MR. NORK: Thank you. I will do that, your</p> <p>4 Honor.</p> <p>5 BY MR. NORK:</p> <p>6 Q. How much -- I understand that Vermont went</p> <p>7 into liquidation.</p> <p>8 A. Yes.</p> <p>9 Q. Before that time how many shares did you</p> <p>10 have left?</p> <p>11 A. Before which time?</p> <p>12 Q. Before Vermont going into liquidation.</p> <p>13 A. Less than 40,000 shares.</p> <p>14 Q. Okay. Okay. Then now you testified on the</p> <p>15 subject already this morning but I want go into it a</p> <p>16 little further about how you received money from</p> <p>17 this Vermont account.</p> <p>18 As I understand it from your deposition</p> <p>19 testimony, you would send a minimum message or email</p> <p>20 to Mr. Livadas, correct?</p> <p>21 A. My deposition I stated that because I was</p> <p>22 speculating on certain conversations that we had.</p> <p>23 Your statements during the deposition, you placed</p> <p>24 two pieces of paper besides one another and asked me</p>

<p style="text-align: right;">Page 30</p> <p>1 to compare them.</p> <p>2 One was the HSBC Bank documents and the</p> <p>3 other was Tom's W.A.M. account, and following that</p> <p>4 discussion you asked me to match each ones.</p> <p>5 Q. My question doesn't have anything to do</p> <p>6 with the HSBC documents that show wire transfers.</p> <p>7 My question has to do with how you obtained money</p> <p>8 from your Vermont account.</p> <p>9 As I understand your deposition testimony,</p> <p>10 it was that you would send either a pin message or</p> <p>11 email to Mr. Livadas.</p> <p>12 A. Okay.</p> <p>13 Q. Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And, in fact, that's what you say on</p> <p>16 page 75 of your deposition, correct?</p> <p>17 A. Let me see.</p> <p>18 (Witness reviewing document.)</p> <p>19 BY MR. NORK:</p> <p>20 Q. "My understanding -- did you play any part</p> <p>21 in the wire that is described in Exhibit 54?</p> <p>22 "Answer: Yep. I would send pin messages</p> <p>23 to Christos to send me money.</p> <p>24 "Question: I'm sorry. To send who money?</p>	<p style="text-align: right;">Page 31</p> <p>1 "Answer: Me money.</p> <p>2 "Question: And so you would send what you</p> <p>3 mean by -- what do you mean by a 'pin message.'.</p> <p>4 "Answer: Blackberry private pin messages.</p> <p>5 "Question: You would pin Christos and ask</p> <p>6 him to send you money.</p> <p>7 "Answer: Yes.</p> <p>8 "Question: And that money would go into</p> <p>9 your father's account.</p> <p>10 "Answer: Correct. I was using my father's</p> <p>11 account at the time."</p> <p>12 That's what your testimony was in October,</p> <p>13 correct?</p> <p>14 A. That was my testimony then. Do we have the</p> <p>15 same exhibits from the deposition that are here?</p> <p>16 MR. NORK: We do.</p> <p>17 THE COURT: Stop.</p> <p>18 THE WITNESS: I'm sorry.</p> <p>19 THE COURT: Mr. Pedafronimos, it's almost</p> <p>20 like you're trying to control your questioning.</p> <p>21 You're not.</p> <p>22 THE WITNESS: Okay.</p> <p>23 THE COURT: So, listen to Mr. Nork. He'll</p> <p>24 direct you to what he wants you to look at. All he</p>
<p style="text-align: right;">Page 32</p> <p>1 told you to look at right now is the deposition, so</p> <p>2 don't go leafing through the exhibit binder to find</p> <p>3 something that might assist you.</p> <p>4 Oftentimes, as is the case in this trial,</p> <p>5 exhibits are marked differently. So, in the</p> <p>6 deposition there's exhibits that we've already</p> <p>7 discussed that are marked in one way that are marked</p> <p>8 differently in this binder.</p> <p>9 So, listen to the question, answer only the</p> <p>10 question. Don't try and anticipate or take it</p> <p>11 somewhere else. Just listen to Mr. Nork's</p> <p>12 questions. He didn't ask you to look at any</p> <p>13 exhibits. Mr. Nork, go ahead.</p> <p>14 MR. NORK: Thank you, your Honor.</p> <p>15 BY MR. NORK:</p> <p>16 Q. And I want to make sure the record's clear.</p> <p>17 When you said "I would send pin messages to Christos</p> <p>18 to send me money and that money would go into my</p> <p>19 father's account," you're not speculating about</p> <p>20 that, correct?</p> <p>21 A. I would send pin messages to Christos to</p> <p>22 help me expedite transactions with Vermont. When I</p> <p>23 couldn't reach Taylor or Glynn by phone, I would</p> <p>24 send pin messages to Christos. All the transaction</p>	<p style="text-align: right;">Page 33</p> <p>1 details would be on the pin messages. The same</p> <p>2 copies, either Taylor or either Glynn or their back</p> <p>3 office would have them.</p> <p>4 Q. All right. I'm not sure that answers my</p> <p>5 question.</p> <p>6 My question is, You're not speculating when</p> <p>7 you said under oath that you would send pin messages</p> <p>8 to Christos for money that would be deposited to</p> <p>9 your father's account.</p> <p>10 A. From time to time I had sent pin messages</p> <p>11 to Christos --</p> <p>12 Q. Okay.</p> <p>13 A. -- to help me process transactions at</p> <p>14 Vermont, expedite them.</p> <p>15 Q. Okay. Well -- okay. And sometimes you</p> <p>16 would send emails as well, correct?</p> <p>17 A. The only instances where I sent emails was</p> <p>18 when Christos would ask me send the bank details via</p> <p>19 email.</p> <p>20 Q. So, I guess the answer to the question is</p> <p>21 "yes"?</p> <p>22 A. Yes, there were previous pin messages from</p> <p>23 every email.</p> <p>24 Q. Okay. Can you turn please to page 87 of</p>

<p style="text-align: right;">Page 34</p> <p>1 your deposition. Line 23, please, "Question: And</p> <p>2 how would you request these withdrawals from</p> <p>3 Christos.</p> <p>4 "Answer: In messages.</p> <p>5 "Question: Okay. Except we've seen some</p> <p>6 emails as well, correct?</p> <p>7 "Answer: Yes. So, when I couldn't find</p> <p>8 him by pin messages, I would shoot out an email.</p> <p>9 "Question: Okay. But more often than not</p> <p>10 they were pin messages?</p> <p>11 "Answer: Yes. 90 percent of the time."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And these are your requests of</p> <p>15 Mr. Livadas for money regarding your personal</p> <p>16 Vermont account?</p> <p>17 A. These are my requests for Christos to</p> <p>18 expedite my request at Vermont.</p> <p>19 Q. I'm confused. Because you testified</p> <p>20 yesterday -- at least I thought you did -- that</p> <p>21 Christos is difficult to get ahold of.</p> <p>22 A. He is.</p> <p>23 Q. Okay. But when you needed money expedited,</p> <p>24 that was the route you took. Is that correct?</p>	<p style="text-align: right;">Page 35</p> <p>1 A. If I couldn't find Taylor, Glynn, yes.</p> <p>2 Q. And then just to complete the loop on how</p> <p>3 you would obtain money, you testified in your</p> <p>4 deposition and testified today that money would go</p> <p>5 from your personal Vermont account into your</p> <p>6 father's account, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And then you wouldn't withdraw the money</p> <p>9 but, rather, your father would withdraw it and</p> <p>10 transfer it to someplace that you asked him to or</p> <p>11 you would give him cash, correct?</p> <p>12 A. He was the only authorized signatory and</p> <p>13 yes, if I needed something, I would have to ask him.</p> <p>14 Q. Okay. Because you couldn't withdraw money</p> <p>15 from his account?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And that way you can say, Well, I</p> <p>18 never received any money from my Vermont account,</p> <p>19 because it was your father's account that was</p> <p>20 receiving money, correct?</p> <p>21 A. To whom would I say that to?</p> <p>22 Q. To anyone.</p> <p>23 A. There were instructions in place at</p> <p>24 Vermont so there was an audit trail. Why would I</p>
<p style="text-align: right;">Page 36</p> <p>1 say that? I wouldn't --</p> <p>2 Q. But the money never -- did money ever go</p> <p>3 into a different bank account of yours directly from</p> <p>4 Vermont?</p> <p>5 A. Yes.</p> <p>6 Q. That was your Swiss account, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. But that Swiss account got closed at</p> <p>9 some point, correct?</p> <p>10 A. In 2013, yes.</p> <p>11 Q. So, after 2013 did money ever go from your</p> <p>12 personal Vermont account to a personal account of</p> <p>13 yours?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Okay. But it also went to your father's</p> <p>16 account, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And your sister's account?</p> <p>19 A. Correct.</p> <p>20 Q. And was your testimony that money was</p> <p>21 coming from your personal Vermont account that you</p> <p>22 funded with Anavex stock into your father's account</p> <p>23 or your sister's account because at the time you</p> <p>24 didn't have an account, correct?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I didn't have an account that I wanted to</p> <p>2 use.</p> <p>3 Q. Okay. Turn, please, to Exhibit 12.</p> <p>4 What is Exhibit 12?</p> <p>5 A. Seems to be an email from my email account,</p> <p>6 subject line "Transfer stock."</p> <p>7 Q. And then the attachment says "Transfer</p> <p>8 dot"--</p> <p>9 A. "JPEG."</p> <p>10 Q. -- "JPEG," correct?</p> <p>11 A. Yes.</p> <p>12 THE COURT: Just to clarify for the court</p> <p>13 reporter, it says "Transfer stuck," not "Transfer</p> <p>14 stock." You said that really quickly and the words</p> <p>15 sound similar and we're talking about stock.</p> <p>16 So, it says "stuck," s-t-u-c-k. I'm not</p> <p>17 sure exactly how that came out, but I had to whip my</p> <p>18 head around to look twice at it. So, it's "Transfer</p> <p>19 stuck, and not "Transfer stock."</p> <p>20 BY MR. NORK:</p> <p>21 Q. Do you recall sending this email to Mr.</p> <p>22 Livadas?</p> <p>23 A. I do.</p> <p>24 MR. NORK: Move to admit Exhibit 12.</p>



<p style="text-align: right;">Page 38</p> <p>1 MR. ANDERSON: Your Honor, I'd object on</p> <p>2 grounds of relevance and hearsay.</p> <p>3 THE COURT: What's the hearsay objection?</p> <p>4 MR. ANDERSON: Well, your Honor, I think he</p> <p>5 testified that the only time he assisted Mr.</p> <p>6 Skarpelos with respect to the transaction at issue</p> <p>7 was in July of 2013 in the proposed sale of stock.</p> <p>8 So, at this time I don't believe he</p> <p>9 qualifies as an agent acting within the scope of his</p> <p>10 agency for purposes of admission of a party</p> <p>11 opponent.</p> <p>12 THE COURT: It's not an admission of a</p> <p>13 party opponent. Just his own statement.</p> <p>14 MR. NORK: It's his email, your Honor.</p> <p>15 THE COURT: Yeah. That's why I'm not quite</p> <p>16 sure we can talk about the relevance, but what's the</p> <p>17 hearsay objection?</p> <p>18 MR. ANDERSON: I think the out-of-court</p> <p>19 statement made six years ago being offered for the</p> <p>20 truth of the matter asserted.</p> <p>21 MR. NORK: Mr. Pedafronimos is on the</p> <p>22 stand.</p> <p>23 THE COURT: Right. So, you can ask him did</p> <p>24 he say exactly these words and he can say yes, he</p>	<p style="text-align: right;">Page 39</p> <p>1 did.</p> <p>2 MR. NORK: Your Honor, Mr. Pedafronimos</p> <p>3 just testified that he remembers sending this email.</p> <p>4 I don't understand the hearsay.</p> <p>5 THE COURT: Well, Mr. Nork, it's an</p> <p>6 interesting objection, and it's one that judges have</p> <p>7 different opinions on. That, even though the</p> <p>8 witness is on the stand testifying, it's still</p> <p>9 hearsay because it's an out-of-court statement. It</p> <p>10 is some statement other than his statement in court.</p> <p>11 You can use it if it's a prior inconsistent</p> <p>12 statement, but it is an out-of-court statement being</p> <p>13 offered in court in support the truth of the matter</p> <p>14 asserted, so technically it's hearsay.</p> <p>15 Even though he's here, there's nothing in</p> <p>16 Chapter 51 that says if the witness is on the stand,</p> <p>17 all of his out-of-court statements come in. It just</p> <p>18 doesn't say that. It's not -- it's technically</p> <p>19 hearsay.</p> <p>20 MR. NORK: Well, your Honor,</p> <p>21 Mr. Pedafronimos just testified that he recalls</p> <p>22 sending this email.</p> <p>23 THE COURT: Right. So, it's not</p> <p>24 inconsistent with anything he said so far.</p>
<p style="text-align: right;">Page 40</p> <p>1 MR. NORK: He authored it. It is an</p> <p>2 authentic document.</p> <p>3 THE COURT: I'm not questioning any of</p> <p>4 that, Mr. Nork.</p> <p>5 MR. NORK: It's a relevant document.</p> <p>6 THE COURT: I'm not disagreeing with you,</p> <p>7 nor do I think -- well --</p> <p>8 MR. NORK: And Mr. Pedafronimos is on the</p> <p>9 stand and so he can be asked questions about the</p> <p>10 truth or accuracy of the statement that he prepared</p> <p>11 and sent.</p> <p>12 THE COURT: Sure. You can ask him</p> <p>13 questions. Mr. Nork, you can ask him questions</p> <p>14 about things that have occurred in the past and</p> <p>15 statements he made.</p> <p>16 But just to admit this, it's an</p> <p>17 out-of-court statement being offered in court in</p> <p>18 support of the truth of the matter asserted,</p> <p>19 correct? Just tell me yes or no on that. Is it?</p> <p>20 MR. NORK: Yes, it is, your Honor.</p> <p>21 THE COURT: Then how, is it not hearsay?</p> <p>22 MR. NORK: Your Honor, that's true of every</p> <p>23 document that's been prepared in this case authored</p> <p>24 by Mr. --</p>	<p style="text-align: right;">Page 41</p> <p>1 THE COURT: I don't worry about other</p> <p>2 documents that have been prepared and admitted in</p> <p>3 this case, because I'm now just dealing with this</p> <p>4 evidentiary objection on this exhibit.</p> <p>5 You know, in the past people come in and</p> <p>6 say, Well, you let this in. Well, nobody objected,</p> <p>7 and now I'm dealing with an evidentiary objection on</p> <p>8 this. Everything that's been admitted is admitted.</p> <p>9 I'm not concerned about that. Hold on a second.</p> <p>10 The definition of hearsay under NRS 51.0135</p> <p>11 is as follows: "Hearsay means a statement offered</p> <p>12 in evidence to prove the truth of the matter</p> <p>13 asserted, unless the statement is one made by a</p> <p>14 witness while testifying at the trial or hearing."</p> <p>15 So, everything that the witness says on the stand,</p> <p>16 not hearsay. So, that's Subsection 1, one made by a</p> <p>17 witness while testifying in trial.</p> <p>18 Sub 2, "The declarant testifies at the</p> <p>19 trial or hearing and is subject to cross-examination</p> <p>20 concerning the statement. And the statement is</p> <p>21 inconsistent with the declarant's testimony."</p> <p>22 That's why I said, Is it a prior inconsistent</p> <p>23 statement? Then it's not hearsay.</p> <p>24 Or, "B, consistent with the declarant's</p>

<p style="text-align: right;">Page 42</p> <p>1 testimony an offer to rebut an express or implied 2 charge against the declarant of recent fabrication 3 or improper influence or motive, or, C, one of 4 identification of a person made soon after 5 proceeding or, D, a transcript of testimony given 6 under oath at a trial or hearing before a grand 7 jury, or the statement is offered against a party 8 and is the party's own statement in either the 9 party's individual or representative capacity, a 10 statement of which the party has manifested an 11 adoption or a belief in its truth, a statement by a 12 person authorized by the party to make a statement 13 concerning that subject, and a statement by the 14 party's agent or servant concerning a matter within 15 the scope of the party's agency or employment made 16 before the termination of the relationship, or a 17 statement by a co-conspirator of a party during the 18 course and in furtherance of the conspiracy." 19 That's just the definition of hearsay. 20 Your argument so far is, He said this, so it's a 21 statement. You just have to get it in somehow. So 22 far you haven't explained to me, other than the fact 23 that on December 21st, 2012, Mr. Pedafonimos said 24 this. Okay.</p>	<p style="text-align: right;">Page 43</p> <p>1 MR. NORK: And, your Honor, he is on the 2 stand and he testified that he said this, which is 3 Sub A. 4 THE COURT: No, it's not, because Sub A is 5 inconsistent. 6 MR. NORK: No. Before that, your Honor. 7 THE COURT: "The statement is one made by a 8 witness while testifying at the trial." 9 MR. NORK: Yes, your Honor. He said -- 10 THE COURT: Mr. Nork, please don't 11 interrupt. 12 MR. NORK: I apologize. 13 THE COURT: This statement, Exhibit 12, is 14 not a statement that he made during the trial. It's 15 a statement putatively that he made at 5:42 and 42 16 seconds a.m. on December 21st, 2012. 17 He's acknowledging in court. His statement 18 in court is, I made this statement then, but you 19 want to get this statement in. You're offering it 20 as an exhibit. The objection is hearsay. 21 This statement, "Hi, Bud," and then it goes 22 on from there, is not a statement that he's making 23 in court. He's saying I -- you're saying he said 24 this back then, so it's not under Subsection 1, the</p>
<p style="text-align: right;">Page 44</p> <p>1 statement is one made by a witness while testifying 2 in a trial. It's not. It's just not. 3 So, you can question him whether or not he 4 said this. It may come in at some later time as a 5 prior inconsistent statement if he denies making it 6 or saying it, but it won't be admitted because by 7 definition it's hearsay. Next question. 8 BY MR. NORK: 9 <b>Q. Do you have any recollection in December of</b> 10 <b>2012 of asking Mr. Livadas to wire funds to your</b> 11 <b>sister's account?</b> 12 THE COURT: Don't look at that. 13 THE WITNESS: Asking Mr. Livadas to wire, 14 no. 15 THE COURT: Now you can ask him the 16 questions, because it might be a prior inconsistent 17 statement. He's saying he doesn't remember it. 18 MR. NORK: Okay. Well, your Honor -- 19 THE COURT: We're not going to discuss the 20 evidentiary issue anymore. You can go ahead. I've 21 ruled on whether or not at the time the evidentiary 22 objection was made whether or not it was hearsay. I 23 find that Exhibit 12, when I made that ruling, was 24 hearsay.</p>	<p style="text-align: right;">Page 45</p> <p>1 Now, you can ask him a question because 2 he's now said he doesn't remember doing -- now that 3 I've reviewed what Exhibit 12 said, he doesn't 4 remember doing that. 5 MR. NORK: Your Honor, just to be clear, he 6 just testified he did not do it, which turns Exhibit 7 12 into a prior inconsistent statement. 8 THE COURT: Mr. Nork, I think you're just 9 getting wrapped up around your own axle. I just 10 said that. I just agreed with you about that and so 11 I said to go ahead and do it and now you can. 12 MR. NORK: Move to admit Exhibit 12. 13 THE COURT: Mr. Anderson. 14 MR. ANDERSON: Your Honor, again, I -- 15 THE COURT: Excuse me. Hold on a second. 16 You hadn't closed the loop earlier. You 17 closed it. That's why I said that, Mr. Nork. You 18 closed the loop. Now it's a prior inconsistent 19 statement. 20 MR. ANDERSON: And, your Honor, I 21 understand -- 22 THE COURT: Why is it relevant? 23 MR. ANDERSON: I don't think it is 24 relevant. Objection, relevance.</p>

<p style="text-align: right;">Page 46</p> <p>1 THE COURT: Now, why is it relevant?</p> <p>2 MR. NORK: It's relevant, your Honor,</p> <p>3 because it shows -- it has been Mr. Livadas'</p> <p>4 testimony that requests were made by Lambros to take</p> <p>5 money out of Mr. Skarpelos' W.A.M. account, and this</p> <p>6 request and other requests will match up with the</p> <p>7 account statement demonstrating that very thing,</p> <p>8 your Honor.</p> <p>9 THE COURT: The relevance objection is</p> <p>10 overruled. The hearsay objection now has been</p> <p>11 clarified. You can answer the question.</p> <p>12 (Exhibit 12 is admitted.)</p> <p>13 BY MR. NORK:</p> <p>14 Q. So, you have Exhibit 12 in front of you?</p> <p>15 A. I have Exhibit 12.</p> <p>16 Q. That's an email from you to Mr. Livadas,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it's titled "Transfer stuck."</p> <p>20 A. Correct.</p> <p>21 Q. And it says "Hi, Bud. Someone forgot to</p> <p>22 include the beneficiary in the details of the</p> <p>23 transfer. Please get the sender to contact his bank</p> <p>24 and provide the beneficiary name for the transfer to</p>	<p style="text-align: right;">Page 47</p> <p>1 go through. Beneficiary name" -- and I'm gonna</p> <p>2 butcher this -- it's XTina Nikoloas Pentafronimos.</p> <p>3 Is that close?</p> <p>4 A. 70 percent.</p> <p>5 Q. That's your sister, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And it's Ntina, but it's pronounced "Tina."</p> <p>8 A. "Dina."</p> <p>9 Q. I'm sorry. "Dina."</p> <p>10 What was the purpose of you e-mailing Mr.</p> <p>11 Livadas regarding this transfer?</p> <p>12 A. There was an issue at the bank during the</p> <p>13 process of the transaction at Vermont -- at the</p> <p>14 broker, Vermont, and I asked Christos if he can fix</p> <p>15 it.</p> <p>16 So, Vermont -- Christos would contact</p> <p>17 Vermont, Vermont would contact their bank, and</p> <p>18 their bank would sort it out. When there's a</p> <p>19 transaction stuck in the air or there's incomplete</p> <p>20 details in a transfer, it usually is the case where</p> <p>21 the correspondent bank, Vermont, with HSBC would</p> <p>22 have to communicate with each other in order for the</p> <p>23 information to be submitted --</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 48</p> <p>1 A. -- so the transaction can be processed.</p> <p>2 Q. Okay. And you recall -- there's a</p> <p>3 reference to an attachment. You see it, "transfer</p> <p>4 JPEG"?</p> <p>5 A. I do.</p> <p>6 Q. Do you recall what that "transfer JPEG" is?</p> <p>7 A. I believe it's in the exhibits as well.</p> <p>8 Q. Okay. Can you turn, please, to Exhibit 11.</p> <p>9 Is Exhibit 11 the transfer that you recall</p> <p>10 being attached to -- as an attachment to your email</p> <p>11 Exhibit 12?</p> <p>12 A. I do.</p> <p>13 MR. NORK: Move to admit Exhibit 11.</p> <p>14 THE COURT: Mr. Anderson.</p> <p>15 MR. ANDERSON: Your Honor, I would object,</p> <p>16 again, to the extent that this is hearsay within the</p> <p>17 previous hearsay objection I understand the Court</p> <p>18 overruled. So, hearsay.</p> <p>19 THE COURT: Okay. And the Court will admit</p> <p>20 Exhibit 11. I'm not quite sure why they were broken</p> <p>21 down into two separate exhibits, but it appears to</p> <p>22 the Court that Exhibit 11 and Exhibit 12 should</p> <p>23 be -- or should have been submitted as one exhibit</p> <p>24 because it's both the email and attachment to the</p>	<p style="text-align: right;">Page 49</p> <p>1 email.</p> <p>2 So, Exhibit 11 will be admitted over</p> <p>3 objection. The court notes that it's partially in</p> <p>4 Greek and partially in English.</p> <p>5 MR. NORK: Yes, your Honor. The lack of</p> <p>6 attachment is my fault. If you look at the Bates</p> <p>7 stamp, they are consecutive.</p> <p>8 THE COURT: That's okay.</p> <p>9 MR. NORK: I think I inadvertently</p> <p>10 separated them.</p> <p>11 THE COURT: Mr. Anderson? You stood up</p> <p>12 like you wanted to say something.</p> <p>13 MR. ANDERSON: I'm sorry, your Honor. He's</p> <p>14 correct. I don't take issue that this appears to be</p> <p>15 the attachment at all. My objection was just that</p> <p>16 it was hearsay within the other hearsay that the</p> <p>17 Court had overruled.</p> <p>18 THE COURT: Right. And Exhibit 11 is page</p> <p>19 345 -- strike that. Exhibit 12 is 345 and Exhibit</p> <p>20 11 is 346 chronologically.</p> <p>21 MR. NORK: Thank you, your Honor.</p> <p>22 (Exhibit 11 admitted.)</p> <p>23 BY MR. NORK:</p> <p>24 Q. So, let's focus on Exhibit 11, please.</p>

<p style="text-align: right;">Page 50</p> <p>1 What is Exhibit 11?</p> <p>2 A. A Swift message.</p> <p>3 Q. A Swift message. That's an effort to track</p> <p>4 wire transfer requests, correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And this is a wire transfer for</p> <p>7 an account that originates at Verdmont Capital,</p> <p>8 correct --</p> <p>9 A. Correct.</p> <p>10 Q. -- that then goes to HSBC Bank, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And then finally ends up at Alpha Bank,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Can you tell from Exhibit 11 who the</p> <p>16 account-holder is at Verdmont Capital?</p> <p>17 A. You can't.</p> <p>18 Q. You cannot?</p> <p>19 A. No.</p> <p>20 Q. So, you can't tell if it's your personal</p> <p>21 account or if it's W.A.M.'s account, correct?</p> <p>22 A. Correct.</p> <p>23 Q. All right. All we know is it's going from</p> <p>24 Verdmont Capital to HSBC to Alpha Bank.</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Correct. There's no identifying</p> <p>2 information on that statement.</p> <p>3 Q. Okay.</p> <p>4 THE COURT: Excuse me, gentlemen. Where</p> <p>5 are you seeing it goes from Verdmont Capital to HSBC</p> <p>6 to Alpha Bank?</p> <p>7 BY MR. NORK:</p> <p>8 Q. The ordering customer is identified as</p> <p>9 "Verdmont Capital," correct?</p> <p>10 A. Correct.</p> <p>11 Q. That the sender is HSBC Bank, correct?</p> <p>12 A. That's what it says in the statement.</p> <p>13 THE COURT: Oh, I see it.</p> <p>14 BY MR. NORK:</p> <p>15 Q. And the receiver is "Alpha Bank of Athens,"</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. So, we kinda use this chart and maybe this</p> <p>19 will assist the Court.</p> <p>20 THE COURT: No. I got it. I just didn't</p> <p>21 -- I understood it. Now it makes sense.</p> <p>22 BY MR. NORK:</p> <p>23 Q. Okay. But the problem is there's a</p> <p>24 handwritten arrow about two-thirds of the way down</p>
<p style="text-align: right;">Page 52</p> <p>1 on Exhibit 11.</p> <p>2 A. Correct.</p> <p>3 Q. And you wrote that?</p> <p>4 A. I did not.</p> <p>5 Q. In any event, that is where the</p> <p>6 beneficiary's name should be entered, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And it's not correct?</p> <p>9 A. Correct.</p> <p>10 Q. All that's listed there is -- looks like an</p> <p>11 account number and the location of the -- of the</p> <p>12 branch for Alpha Bank.</p> <p>13 A. Seems to be the address of the beneficiary.</p> <p>14 Q. Okay. And you recognize that address,</p> <p>15 correct?</p> <p>16 A. I do.</p> <p>17 Q. What is that address?</p> <p>18 A. It's the area in which my family's estate</p> <p>19 is located.</p> <p>20 Q. Okay. And so you're in Exhibit 12 advising</p> <p>21 Mr. Livadas that the beneficiary, which is not</p> <p>22 listed on Exhibit 11, needs to be added and the</p> <p>23 beneficiary is your sister, correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Turn, please to, Exhibit 59, the second to</p> <p>2 the last page, please. You were asked questions</p> <p>3 yesterday about your email to Mr. Livadas with the</p> <p>4 subject line "Quadruple bypass" and the content of</p> <p>5 the email being "Bank information," correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the bank information was also for Alpha</p> <p>8 Bank, correct?</p> <p>9 A. Yes.</p> <p>10 Q. But this time the beneficiary is your</p> <p>11 father, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And do you recall as you sit here why you</p> <p>14 would have sent this email to Mr. Livadas?</p> <p>15 A. This specific email, no. As I said</p> <p>16 yesterday during my testimony, it's hard for me to</p> <p>17 believe that this subject line would be with these</p> <p>18 bank details in this specific format.</p> <p>19 I remember sending Christos a message with</p> <p>20 regards to what ended up happening with Tom's</p> <p>21 specified surgery, that he was having a quadruple</p> <p>22 bypass, but banking details on the same subject line</p> <p>23 as "Quadruple bypass," I don't remember sending.</p> <p>24 Q. Okay. You're not suggesting that this</p>

<p style="text-align: right;">Page 54</p> <p>1 email was manufactured, is -- somebody just created 2 it out of thin air.</p> <p>3 A. I've seen the other exhibit as well where 4 it just states mine and Christos' without the email 5 chain. To my recollection, I haven't -- I haven't 6 seen it in my personal files and I don't remember 7 writing these two subjects together.</p> <p>8 Q. Turn, please, to Exhibit 18, the email that 9 you referenced.</p> <p>10 A. Yes.</p> <p>11 Q. This purports to be an email sent by you to 12 Mr. Livadas, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the entire content is, "Subject, 15 quadruple bypass," and then the bank information 16 included below.</p> <p>17 A. Correct.</p> <p>18 Q. And you don't believe you sent this.</p> <p>19 A. I don't recall sending this in this -- how 20 can I say it? -- in this format. Like I said 21 before, I remember sending Christos a message about 22 Tom's quadruple bypass, but I don't remember sending 23 an email and bank account information with it. It 24 doesn't make sense to me.</p>	<p style="text-align: right;">Page 55</p> <p>1 MR. NORK: Move to admit Exhibit 18.</p> <p>2 MR. ANDERSON: Again, your Honor, 3 objections on hearsay and relevance.</p> <p>4 THE COURT: I understand what the relevance 5 is. I'll overrule the relevance objection. 6 Regarding hearsay, Mr. Nork.</p> <p>7 MR. NORK: It's a prior inconsistent 8 statement, your Honor.</p> <p>9 MR. ANDERSON: I don't think that he -- he 10 testified he doesn't remember sending it. If Mr. 11 Nork wants to refresh his recollection as to whether 12 he thinks he sent this email, he can do that. I 13 don't know that this email needs to be admitted as 14 an exhibit solely because of that basis.</p> <p>15 THE COURT: I'm going to admit the exhibit 16 at this point. It is a prior inconsistent statement 17 Mr. Pedafronimos has acknowledged that it's from his 18 email account. He says he doesn't remember sending 19 it, but given the identifying information and the 20 fact he says it's coming from his account, it's at 21 least reasonable to conclude based on his testimony 22 that he sent it, so it's a prior inconsistent 23 statement.</p> <p>24 However, the court also notes that I'm not</p>
<p style="text-align: right;">Page 56</p> <p>1 quite sure what weight I'll give it, so it's 2 admitted. But then I have to determine what weight 3 to give it when I finally analyze the case. And so 4 Mr. Pedafronimos is saying that he doesn't really 5 remember sending it, it's inconsistent with the 6 subject line and it's not what he would send under 7 the circumstances.</p> <p>8 So, it's admitted and I'll decide what 9 weight at some later time.</p> <p>10 (Exhibit 18 admitted.)</p> <p>11 BY MR. NORK:</p> <p>12 Q. Mr. Pedafronimos, can you turn to your 13 deposition at page 79. Do you have it?</p> <p>14 A. Uh-huh.</p> <p>15 Q. You understand why I do that, right? I 16 explained at your deposition. And I apologize if it 17 sounds rude, but I want the record to be clear.</p> <p>18 "So, what's the significance of the subject 19 line "Quadruple bypass?"</p> <p>20 "Answer: So, Tom had a bypass.</p> <p>21 "Question: Yes.</p> <p>22 "Answer: And I requested funds from 23 Christos.</p> <p>24 "Question: For what?</p>	<p style="text-align: right;">Page 57</p> <p>1 "Answer: To have my funds from Christos.</p> <p>2 "Question: Right. What did that have to 3 do with the bypass?</p> <p>4 "Answer: Nothing.</p> <p>5 "Question: Why did you write a subject of 6 'quadruple bypass.'.</p> <p>7 "Answer: To inform Christos that Tom had a 8 heart attack.</p> <p>9 "Question: But there's nothing in the body 10 of this email that says anything further about 11 quadruple bypass, correct?</p> <p>12 "Answer: No. Correct.</p> <p>13 "Question: So, the subject of "quadruple 14 bypass" and it's bank information regarding your 15 father's bank account.</p> <p>16 "Answer: Correct.</p> <p>17 "Question: And it's your testimony that 18 those two things are completely unrelated.</p> <p>19 "Answer: Yep. So, I was advising Christos 20 that his friend Tom had a heart attack at that time 21 and I was requesting money on my end."</p> <p>22 That was your testimony in October.</p> <p>23 A. It was.</p> <p>24 Q. And you didn't say in October, I don't</p>

<p style="text-align: right;">Page 58</p> <p>1 remember sending this email, correct?</p> <p>2 A. I didn't say it in October, I don't believe</p> <p>3 so.</p> <p>4 Q. In fact, your explanation was you were just</p> <p>5 conveying two bits of information to Mr. Livadas in</p> <p>6 the same email, one, Mr. Skarpelos had a heart</p> <p>7 attack and, two, please send me money, correct?</p> <p>8 A. At that time when I saw the email, yes,</p> <p>9 that was my interpretation of it.</p> <p>10 Q. Okay. And it's your testimony in October</p> <p>11 that Mr. Skarpelos had a heart attack, correct?</p> <p>12 A. The difference between the words "heart</p> <p>13 attack" and "quadruple bypass" and "surgery" at the</p> <p>14 time of the deposition how can I be so accurate as</p> <p>15 to -- it's speculative. I was interpreting. I was</p> <p>16 getting fed leading questions.</p> <p>17 THE COURT: Hold on a second. I'm going to</p> <p>18 step in again. Answer the question,</p> <p>19 Mr. Pedafonimos. Don't explain your answer until</p> <p>20 you're called on to do so either by Mr. Nork or by</p> <p>21 Mr. Anderson.</p> <p>22 The question simply was, You identified</p> <p>23 that he had a heart attack. And it's clear on page</p> <p>24 80 in response to the question on page 79 from Mr.</p>	<p style="text-align: right;">Page 59</p> <p>1 Nork, "Question: Why did you write a subject of</p> <p>2 'quadruple bypass,'.</p> <p>3 "Answer: To inform Christos that Tom had a</p> <p>4 heart attack."</p> <p>5 So, you said he had a heart attack.</p> <p>6 THE WITNESS: I did say that.</p> <p>7 THE COURT: Thank you. Next question.</p> <p>8 You can ask him questions about that, Mr.</p> <p>9 Nork. I wasn't trying to hijack your</p> <p>10 cross-examination.</p> <p>11 MR. NORK: You're doing a great job, your</p> <p>12 Honor.</p> <p>13 THE COURT: I'm intentionally trying not to</p> <p>14 do that. I'm just trying to emphasize to the</p> <p>15 witness to just answer the questions that get asked.</p> <p>16 BY MR. NORK:</p> <p>17 Q. And there has been a question in this trial</p> <p>18 about whether or not Mr. Skarpelos had a heart</p> <p>19 attack, a bypass heart surgery.</p> <p>20 In any event, at least your testimony in</p> <p>21 October was that Tom had a heart attack, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And now it's your position that he</p> <p>24 did not have a heart attack, correct?</p>
<p style="text-align: right;">Page 60</p> <p>1 A. It's my position that he had a quadruple</p> <p>2 bypass.</p> <p>3 Q. Okay. And to you that's the same thing,</p> <p>4 correct?</p> <p>5 A. It is not the same thing.</p> <p>6 Q. Okay. Turn, please, to Exhibit 19.</p> <p>7 What is Exhibit 19?</p> <p>8 A. It appears to be an email from my email</p> <p>9 account.</p> <p>10 Q. Okay. What's the date of the email?</p> <p>11 A. I don't know the -- whether it's --</p> <p>12 Q. Oh, yeah.</p> <p>13 A. The dates.</p> <p>14 Q. Fair enough. It's either September 5th</p> <p>15 or May 9th, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Well, let's go to Exhibit 18. At least in</p> <p>18 the format for Exhibit 18 it is month, day, then</p> <p>19 year, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So, when we look at Exhibit 19, it</p> <p>22 is also from your Gmail account, correct?</p> <p>23 A. Correct. It appears to be.</p> <p>24 Q. Okay. So, and the email address to Mr.</p>	<p style="text-align: right;">Page 61</p> <p>1 Livadas for both Exhibit 18 and 19 is the same,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. So, is it fair to say to conclude, sir,</p> <p>5 that the date is May 9th, 2013?</p> <p>6 A. There's no email address for Christos here.</p> <p>7 Q. You're right. Under the recipient line</p> <p>8 "to" for both Exhibits 18 and 19, my point was that</p> <p>9 the letters and symbols are the same for both,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And your email address is the same</p> <p>13 for both, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And so is it fair to conclude, sir, that</p> <p>16 the date is not September 5th but, rather, it's</p> <p>17 May 9th, 2013?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Do you recall sending this email?</p> <p>20 A. It appears to be from my email to Christos.</p> <p>21 It was probably sent from me to Christos. It</p> <p>22 appears -- it seems like my writing, bank details</p> <p>23 are similar, my name's attached so subject line.</p> <p>24 Q. Okay.</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yes.</p> <p>2 Q. Is this a cut-and-paste, sir, of the</p> <p>3 content of Exhibit 18, the subject matter?</p> <p>4 A. It's not an exact copy-and-paste. It's the</p> <p>5 same bank details.</p> <p>6 Q. Well, do you have a recollection of when</p> <p>7 you sent emails to Mr. Livadas requesting money that</p> <p>8 you may have cut and pasted bank information from</p> <p>9 prior emails?</p> <p>10 A. I do not.</p> <p>11 Q. Do you see how right above your signature</p> <p>12 line for both Exhibit 18 and 19 are two dash marks?</p> <p>13 A. I do.</p> <p>14 Q. Do you type those in?</p> <p>15 A. It's automatic.</p> <p>16 Q. That's your Gmail signature?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. I may have asked you this before,</p> <p>19 but do you recall asking Mr. Livadas in or about</p> <p>20 May 9th, 2013, for more money?</p> <p>21 A. I remember sending him bank details.</p> <p>22 Requesting him for more money, no.</p> <p>23 Q. Okay. What was the purpose, then, of --</p> <p>24 your recollection is you sent bank details in May of</p>	<p style="text-align: right;">Page 63</p> <p>1 2013. As you sit here today, what is your</p> <p>2 recollection of the purpose for sending that?</p> <p>3 A. The purpose of sending the bank details?</p> <p>4 Q. Yes, sir.</p> <p>5 A. So, before that there would be a pin</p> <p>6 message telling Christos, Christos, I made this</p> <p>7 transfer request, hasn't gone through yet. And</p> <p>8 Christos would reply, Send me the bank details. So,</p> <p>9 that's why there's no amounts here, there's no</p> <p>10 nothing here.</p> <p>11 Q. Okay. But the point of you sending this</p> <p>12 email, is it to request money from Mr. Livadas?</p> <p>13 A. It was to request money to expedite my</p> <p>14 request at Verdmont.</p> <p>15 Q. Can you turn, please, to your deposition at</p> <p>16 page 78. I'll represent to you, sir, that this</p> <p>17 Exhibit 19 in the deposition was Exhibit 46.</p> <p>18 So, the question starts at page 22.</p> <p>19 "Question" -- I'm sorry. Page 78, line 22.</p> <p>20 A. Okay.</p> <p>21 Q. "Question: And, again, it's your testimony</p> <p>22 that Exhibit 46 is another example of you asking</p> <p>23 Christos to send you money.</p> <p>24 "Answer: Correct."</p>
<p style="text-align: right;">Page 64</p> <p>1 A. Okay.</p> <p>2 Q. Okay. And maybe we're talking about the</p> <p>3 same thing, but your point is that there's no dollar</p> <p>4 amount in Exhibit 19, correct?</p> <p>5 A. Correct.</p> <p>6 Q. But it is part of a process in you</p> <p>7 requesting money from Mr. Livadas, correct?</p> <p>8 A. It's part of the process of me asking</p> <p>9 Christos to check out what's happening with my</p> <p>10 account at Verdmont to contact Taylor, contact</p> <p>11 Jules, contact Glynn.</p> <p>12 Q. But that entire explanation was not</p> <p>13 provided --</p> <p>14 A. It was not.</p> <p>15 Q. -- in your deposition. I need to finish</p> <p>16 asking the question.</p> <p>17 That entire explanation that you just</p> <p>18 provided is not contained in your deposition</p> <p>19 testimony, is it?</p> <p>20 A. No.</p> <p>21 Q. Okay. And why are you asking money to be</p> <p>22 sent to your father's account in May of 2013?</p> <p>23 A. I stated previously in my testimony in my</p> <p>24 deposition that I had issue with my Swiss accounts.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. So, again, this is the process that</p> <p>2 you testified to generally, which is money goes from</p> <p>3 Verdmont to HSBC to your father's Alpha Bank account</p> <p>4 and then he withdraws the money and gives it to you,</p> <p>5 correct?</p> <p>6 A. You don't see that process. It happens</p> <p>7 automatically. So it would be Verdmont to Nik.</p> <p>8 Q. True. But for Exhibit 11, which is the</p> <p>9 Swift statement, it kind of describes that process</p> <p>10 that I was trying to summarize.</p> <p>11 Is it your understanding that that's how</p> <p>12 the money got from Verdmont to your father's Alpha</p> <p>13 Bank account?</p> <p>14 A. Based on the exhibits we've seen, yes.</p> <p>15 Q. Okay. Was Mr. Livadas an authorized signer</p> <p>16 on your personal Verdmont account?</p> <p>17 A. No, he was not.</p> <p>18 Q. He was not a co-account-holder for your</p> <p>19 personal Verdmont account, was he?</p> <p>20 A. He was not.</p> <p>21 Q. To your knowledge was Mr. Livadas an owner</p> <p>22 of Verdmont?</p> <p>23 A. To my knowledge, I don't know.</p> <p>24 Q. To your knowledge, is Mr. Livadas an</p>

<p style="text-align: right;">Page 66</p> <p>1 officer of Vermont?</p> <p>2 A. I don't know.</p> <p>3 Q. Was he on the board of directors of</p> <p>4 Vermont?</p> <p>5 A. I don't know.</p> <p>6 Q. Did he have any ownership connection</p> <p>7 whatsoever with Vermont?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. Did you ever tell anyone at Vermont</p> <p>10 that Mr. Livadas had authority to make money</p> <p>11 requests from your personal account?</p> <p>12 A. He didn't make money requests.</p> <p>13 Q. Who is -- who was your primary contact at</p> <p>14 Vermont?</p> <p>15 A. Taylor.</p> <p>16 Q. Taylor what?</p> <p>17 A. Houser.</p> <p>18 Q. Taylor Houser.</p> <p>19 And what position did he have?</p> <p>20 A. He was one of the principals.</p> <p>21 Q. Okay. Was he your broker at Vermont?</p> <p>22 A. He was the owner of Vermont with Glynn.</p> <p>23 Q. Okay. With -- I'm sorry?</p> <p>24 A. Glynn.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. So, Taylor and Glynn are both co-owners of</p> <p>2 Vermont?</p> <p>3 A. Principals, yes.</p> <p>4 Q. Okay. But I don't understand, sir, why</p> <p>5 you're calling someone with no connection whatsoever</p> <p>6 to Vermont so that you can get money out of your</p> <p>7 personal Vermont account.</p> <p>8 Can you explain that, please?</p> <p>9 A. Sure. Christos in 2008 was promoting</p> <p>10 Vermont to everybody he met. He was sending the</p> <p>11 promotional videos around and very close friends</p> <p>12 with the principals at Vermont.</p> <p>13 I met Taylor and Glynn in Amsterdam with</p> <p>14 Christos in 2013 during our round-the-world trip.</p> <p>15 We had a very close and personal connection with</p> <p>16 him, and if I needed help and assistance with</p> <p>17 anything having to do with my account at Vermont, I</p> <p>18 would ask Christos to help me out.</p> <p>19 Q. You claimed to be an account-holder at</p> <p>20 Vermont, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Wouldn't you have more authority to get</p> <p>23 money out of your account than Mr. Livadas, who is</p> <p>24 buddies with some of the owners?</p>
<p style="text-align: right;">Page 68</p> <p>1 A. It doesn't work like that in Panama, Mr.</p> <p>2 Nork.</p> <p>3 Q. I see. When you asked in December of 2012</p> <p>4 for Mr. Livadas to correct the beneficiary name, why</p> <p>5 didn't you make that request?</p> <p>6 A. I had.</p> <p>7 Q. Is there any evidence of that?</p> <p>8 A. Here provided, no.</p> <p>9 Q. Okay. But it's your testimony that Mr.</p> <p>10 Livadas, who has no connection whatsoever to your</p> <p>11 personal Vermont account -- he was the one that you</p> <p>12 contacted when you needed to correct the beneficiary</p> <p>13 for a wire request.</p> <p>14 A. Yeah. So -- sorry. I'm getting ahead</p> <p>15 myself again. Repeat the question.</p> <p>16 Q. The question is, It's your testimony that</p> <p>17 you contacted Mr. Livadas, who has no connection</p> <p>18 whatsoever to your alleged personal Vermont</p> <p>19 account, to correct the beneficiary in your wire</p> <p>20 request.</p> <p>21 A. I contacted him to contact somebody at</p> <p>22 Vermont at the trading desk or at the clearance</p> <p>23 desk to make a note for that instance, to correct</p> <p>24 it.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Please turn to your deposition at page 76.</p> <p>2 Line 15, "Question: How often do you recall that</p> <p>3 you asked Christos to send you money.</p> <p>4 "Answer: On and off," correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And your testimony on the prior page</p> <p>7 is that you would send pin messages to Christos to</p> <p>8 send you money, correct?</p> <p>9 A. That's what I said in my testimony.</p> <p>10 Q. And then my questioning on page 75, line</p> <p>11 12, "You would pin Christos to ask him to send you</p> <p>12 money.</p> <p>13 "Answer: Yeah.</p> <p>14 "Question: And that money would go into</p> <p>15 your father's account?</p> <p>16 "Answer: Correct. I was using my father's</p> <p>17 account at the time."</p> <p>18 A. Correct.</p> <p>19 Q. There was no statement in here whatsoever,</p> <p>20 is there, that you are asking Christos to ask Taylor</p> <p>21 or Glynn or somebody else at Vermont to get the</p> <p>22 money out of your account? These all are your</p> <p>23 statements that, I would send pin messages to</p> <p>24 Christos to, quote, send me money, correct?</p>



<p style="text-align: right;">Page 70</p> <p>1 A. Correct. It was my mistake for not</p> <p>2 listening to your questions carefully.</p> <p>3 Q. It's your testimony that these requests for</p> <p>4 money have nothing to do with Mr. Skarpelos' account</p> <p>5 at W.A.M., correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you understand that W.A.M. also had an</p> <p>8 account at Verdmont?</p> <p>9 A. Not to my knowledge. I'm sorry. What do</p> <p>10 you mean by "account"?</p> <p>11 Q. Well, didn't you testify yesterday that</p> <p>12 W.A.M. had an account at Verdmont?</p> <p>13 A. There's a difference between Weiser Asset</p> <p>14 Management having a business account there and</p> <p>15 having a custodial relationship and corresponding</p> <p>16 account there.</p> <p>17 Q. I'll ask the question again. Wasn't it</p> <p>18 your testimony yesterday that W.A.M. had an account</p> <p>19 at Verdmont?</p> <p>20 A. I believe my testimony yesterday was that</p> <p>21 W.A.M. had a custody and correspondent relationship</p> <p>22 with Verdmont in 2014.</p> <p>23 Q. Okay. Let's change gears a little bit.</p> <p>24 Your testimony in your deposition was that in March</p>	<p style="text-align: right;">Page 71</p> <p>1 of 2013 Tom Skarpelos asked you to find a buyer for</p> <p>2 some or all of his stock, correct?</p> <p>3 A. There were discussions at that time.</p> <p>4 Q. Okay. And you relayed those discussions to</p> <p>5 Mr. Livadas, correct?</p> <p>6 A. Yes. So, it was between me, Christos, and</p> <p>7 Tom.</p> <p>8 Q. And what specifically did you ask Mr.</p> <p>9 Livadas to do in March of 2013?</p> <p>10 A. Specifically?</p> <p>11 Q. Yes, sir.</p> <p>12 A. The discussions that were going back and</p> <p>13 forth at that time was Christos would find a buyer.</p> <p>14 I didn't have to contact a buyer. Mine was simply a</p> <p>15 communications role.</p> <p>16 Q. Let's look at what you said in response to</p> <p>17 that question. Turn to page 61 of your deposition.</p> <p>18 A. Page 61?</p> <p>19 Q. Yes, sir.</p> <p>20 A. Line 16.</p> <p>21 Q. "Question: Okay. And what exactly did you</p> <p>22 tell Christos in March 2013?</p> <p>23 "Answer: That if he had any idea if he</p> <p>24 could find a purchaser or buyer, somebody interested</p>
<p style="text-align: right;">Page 72</p> <p>1 in purchasing some of Tom's position."</p> <p>2 Do you see that?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And do you recall conveying that</p> <p>5 instruction to Mr. Livadas in March of 2013?</p> <p>6 A. I do. I do.</p> <p>7 Q. Okay. And that was as a result of requests</p> <p>8 made to you by the --</p> <p>9 A. Late March. Sorry for interrupting.</p> <p>10 Q. And that was a request that was made to you</p> <p>11 by Mr. Skarpelos, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So, you said to Mr. Livadas in March</p> <p>14 of 2013, Please try to find a buyer of some or all</p> <p>15 of Tom's position, correct?</p> <p>16 A. I didn't say "Please try to find a buyer.</p> <p>17 If he had any idea, if he could find a purchaser or</p> <p>18 buyer, somebody interested in purchasing some of</p> <p>19 Tom's position.</p> <p>20 Q. Okay. Let me ask you this: What do you</p> <p>21 mean by "some of Tom's position"?</p> <p>22 What position are you talking about?</p> <p>23 A. Some or all. The discussions at that time</p> <p>24 that were occurring at the end of June, June-ish,</p>	<p style="text-align: right;">Page 73</p> <p>1 mid to late June were for Tom's entire position.</p> <p>2 Q. I'm focused on March of 2013 where you</p> <p>3 testified --</p> <p>4 A. Not --</p> <p>5 Q. -- in March of 2013 where you testified</p> <p>6 that you told Mr. Livadas that if he had any idea he</p> <p>7 could find a purchaser, a buyer, somebody interested</p> <p>8 in Mr. Chairmaning some of Tom's position, my</p> <p>9 question is, What did you intend to mean by "some of</p> <p>10 Tom's position"?</p> <p>11 A. Any number. It wasn't discussed at that</p> <p>12 time -- in March at that time.</p> <p>13 Q. Okay. But the position we're talking about</p> <p>14 is Mr. Skarpelos' Anavex stock ownership?</p> <p>15 A. Correct.</p> <p>16 Q. Do you recall what the number of shares</p> <p>17 were of his entire stock position?</p> <p>18 A. The exact number?</p> <p>19 Q. Yes, sir.</p> <p>20 A. The exact number I can't -- from my</p> <p>21 recollection 6.6 million. It's not accurate, the</p> <p>22 6.6 million. It should be a little more.</p> <p>23 Q. Fair enough. I can assist you if you turn</p> <p>24 to Exhibit 1. Do you recognize that?</p>

<p style="text-align: right;">Page 74</p> <p>1 A. Yes.</p> <p>2 Q. How many shares of stock is evidenced by</p> <p>3 Exhibit 1?</p> <p>4 A. 6.633332 shares.</p> <p>5 Q. Okay. But I want to be clear because, as</p> <p>6 you know -- because you were there -- Mr. Skarpelos</p> <p>7 also deposited another stock certificate, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And can you turn, please, to Exhibit 4.</p> <p>10 And that is Stock Certificate 660. How many shares</p> <p>11 of stock are evidenced by that certificate?</p> <p>12 A. \$92,500.</p> <p>13 Q. So, when you say "his position," did you</p> <p>14 mean the total of both certificates combined or just</p> <p>15 Certificate 753?</p> <p>16 A. In March it was general discussions.</p> <p>17 Again, it wasn't specified to a value.</p> <p>18 Q. Okay. But, again, the question is just,</p> <p>19 When you said if he could sell, quote, some of Tom's</p> <p>20 position, unquote, were you discussing only the</p> <p>21 Certificate 7534 or both 753 and 660 in March of</p> <p>22 2013?</p> <p>23 A. I can't answer you accurately because I</p> <p>24 don't -- it's not that I don't remember. It's --</p>	<p style="text-align: right;">Page 75</p> <p>1 how can I say this? It was general discussion at</p> <p>2 that time to sell a position of Tom. The intent was</p> <p>3 to find a purchaser. It wasn't my understanding</p> <p>4 that there was a specific number involved or decided</p> <p>5 at that time.</p> <p>6 Q. Okay. And what was it that led up to your</p> <p>7 request of Mr. Livadas in March of 2013 to try to</p> <p>8 sell some of Tom's position?</p> <p>9 A. My request?</p> <p>10 Q. Yes. What facts led up to your telling Mr.</p> <p>11 Livadas in March of 2013 if he had any idea if he</p> <p>12 could find a purchaser or buyer of some of Tom's</p> <p>13 position.</p> <p>14 A. What led -- sorry. Once again.</p> <p>15 What led me to send Christos?</p> <p>16 Q. To ask Christos to try to find a buyer for</p> <p>17 some of Tom's position.</p> <p>18 A. There were discussions between me and Tom--</p> <p>19 Q. Okay.</p> <p>20 A. -- to find a purchaser.</p> <p>21 Q. Did you have an understanding as a result</p> <p>22 of those discussions why Mr. Skarpelos wanted to</p> <p>23 sell his stock?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. Did you have any understanding of</p> <p>2 what Mr. Skarpelos' financial condition was leading</p> <p>3 up to the March 2013 request?</p> <p>4 A. No.</p> <p>5 Q. Did you understand if the March 2013</p> <p>6 request had anything to do with Tom's --</p> <p>7 Mr. Skarpelos' health?</p> <p>8 A. No.</p> <p>9 Q. Can you turn, please, to your deposition at</p> <p>10 page 60. The question at line 9, "Question: And</p> <p>11 when was that request initially made to try to sell</p> <p>12 the shares?</p> <p>13 "Answer: The initial discussions from my</p> <p>14 end began in March, late March --</p> <p>15 "Question: Of --</p> <p>16 "Answer -- through 2013.</p> <p>17 "Question. And was it -- what is it that</p> <p>18 helps you recall that it was in late March 2013?</p> <p>19 "Answer: It was a little bit before Tom</p> <p>20 had told me about his problems with his health.</p> <p>21 Yeah.</p> <p>22 "Question: Okay. So, before you became</p> <p>23 aware of Tom's health issues, he had discussed with</p> <p>24 you the prospect of selling all of his stock.</p>	<p style="text-align: right;">Page 77</p> <p>1 "Answer: After Tom discussed his health</p> <p>2 issues with me, he had discussed finding a purchaser</p> <p>3 for his position."</p> <p>4 And so my question is this: Is it your</p> <p>5 testimony -- does the request to sell some of Tom's</p> <p>6 position in March of 2013 have anything to do with</p> <p>7 his health?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. You just correlate those two events</p> <p>10 chronologically.</p> <p>11 A. Your mind's a fickle thing. It puts pieces</p> <p>12 of the puzzle together, so I don't know at that time</p> <p>13 if it was my understanding that it had to do with</p> <p>14 his health or not.</p> <p>15 So, he had advised me that he was going</p> <p>16 into surgery and also to get in contact with</p> <p>17 Christos and see what Christos can do to find a</p> <p>18 purchaser or a strategic investor for the stock.</p> <p>19 Q. Okay.</p> <p>20 THE COURT: You got about 20 minutes before</p> <p>21 we take a break.</p> <p>22 MR. NORK: Okay.</p> <p>23 BY MR. NORK:</p> <p>24 Q. Can you turn please to Exhibit 25. And you</p>

<p style="text-align: right;">Page 78</p> <p>1 testified both yesterday and in your deposition that</p> <p>2 Mr. Skarpelos asked you to assist him in getting a</p> <p>3 stock sale and purchase agreement put together.</p> <p>4 A. Mr. Skarpelos asked me to communicate with</p> <p>5 certain parties in order for something like this to</p> <p>6 come together.</p> <p>7 Q. Okay. And the reason I focus on Exhibit 25</p> <p>8 is because this is your email to Mr. Livadas, your</p> <p>9 response to Mr. Livadas' request of you, Mr. Livadas</p> <p>10 asked, "Email me blank ones so I can show them what</p> <p>11 they'll be looking like, et cetera," and you</p> <p>12 respond, "Attached, Bud." What are attached are</p> <p>13 some form -- is a form power of attorney and form</p> <p>14 stock purchase and sale agreement.</p> <p>15 A. Correct.</p> <p>16 Q. Do you have any recollection where you</p> <p>17 obtained either of those forms?</p> <p>18 A. Like I stated in my deposition, it's either</p> <p>19 between me and Nick Boutsalis.</p> <p>20 Q. Okay. And but, clearly, based on this</p> <p>21 email thread it didn't come from Mr. Livadas,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. All right. And was Mr. Skarpelos aware</p>	<p style="text-align: right;">Page 79</p> <p>1 that you were engaging in these discussions back and</p> <p>2 forth with Mr. Livadas to try to prepare these</p> <p>3 documents?</p> <p>4 A. He was.</p> <p>5 Q. Okay. Turn, please, to Exhibit 28.</p> <p>6 Exhibit 28 is another email thread. You initially</p> <p>7 e-mailed Mr. Livadas and you say, "Attached is a</p> <p>8 copy of the purchase and sale agreement. Let me</p> <p>9 know if any adjustments need to be made and I'll</p> <p>10 send you a copy of the POA tonight." Mr. Livadas</p> <p>11 responds, "Don't forget they need to be notarized,</p> <p>12 courier originals to Bouts."</p> <p>13 A. Yes.</p> <p>14 Q. And we've already established that</p> <p>15 "Mr. Bouts" is Mr. Boutsalis, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And your response to that email is</p> <p>18 contained in Exhibit 29, correct?</p> <p>19 A. It is without the attachment.</p> <p>20 Q. Right. Fair enough. Good point. It shows</p> <p>21 that there's a PDF attachment but it is not</p> <p>22 physically attached to this exhibit, correct?</p> <p>23 A. Correct.</p> <p>24 Q. But in any event, without the attachment</p>
<p style="text-align: right;">Page 80</p> <p>1 your response is, "Hi, Bud. Please find attached</p> <p>2 the updated purchase and sale document with the</p> <p>3 figures that were discussed. This is the version</p> <p>4 that will be notarized. Cheers," yourself, correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And the updated purchase and</p> <p>7 sale document, the figures that were discussed, is</p> <p>8 that the one that ultimately contained the purchase</p> <p>9 price \$250,000?</p> <p>10 A. Once again from the beginning.</p> <p>11 Q. Okay. When you reference the purchase and</p> <p>12 sale document with the figures that were discussed,</p> <p>13 the figures that we're talking about are the</p> <p>14 purchase price \$250,000. Is that correct?</p> <p>15 A. I can't authenticate that it's that,</p> <p>16 because there's two numbers that were discussed from</p> <p>17 late June to early July. The first figure, as I</p> <p>18 stated in my deposition, was 6.613 million, said</p> <p>19 yesterday in my testimony for half a million, and</p> <p>20 then second is 3.316, respectively 250,000, which</p> <p>21 magically appeared.</p> <p>22 Q. I don't know what "magically appeared"</p> <p>23 means.</p> <p>24 A. Yeah. So, like I stated yesterday in my</p>	<p style="text-align: right;">Page 81</p> <p>1 testimony -- I apologize -- is that that number came</p> <p>2 into existence three or four days prior to me</p> <p>3 sending the agreement to Christos.</p> <p>4 Q. Well, by saying "the number came into</p> <p>5 existence," it came into existence as a result of</p> <p>6 your discussions with Mr. Livadas and Mr. Skarpelos,</p> <p>7 right?</p> <p>8 A. Correct.</p> <p>9 Q. You all agreed on those figures, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Your testimony is you don't know if this</p> <p>12 Trial Exhibit No. 29 is the one that evidences that</p> <p>13 ultimate agreement.</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Fair enough. Turn, please, to</p> <p>16 Exhibit 33. So, whether or not those figures were</p> <p>17 agreed to on July 3rd, which is Exhibit 29, we</p> <p>18 know for sure those figures were agreed to by</p> <p>19 July 9th, six days later in Exhibit 33, correct --</p> <p>20 A. Correct.</p> <p>21 Q. -- because the attachments that are</p> <p>22 attached list those figures, right --</p> <p>23 A. Correct.</p> <p>24 Q. -- the number of shares of stock and the</p>

<p style="text-align: right;">Page 82</p> <p>1 sale price of \$250,000, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Now, do you recall your testimony in</p> <p>4 response to -- I apologize for having you go back</p> <p>5 and forth. Turn back to Exhibit 28.</p> <p>6 Do you recall your testimony in your</p> <p>7 deposition about what you understood was intended by</p> <p>8 the request by Mr. Livadas to courier the originals</p> <p>9 to Bouts as evidenced in Exhibit 28?</p> <p>10 A. In my deposition?</p> <p>11 Q. Yes, sir.</p> <p>12 A. If I recall as to what I stated or --</p> <p>13 Q. Yes. Do you recall what you said?</p> <p>14 A. I don't recall what I said exactly, no.</p> <p>15 Q. Okay. Do you recall testifying that it was</p> <p>16 your understanding that Mr. Livadas asking you to</p> <p>17 courier the originals to Bouts means that the sale</p> <p>18 was close to being finalized?</p> <p>19 A. The terms -- my understanding of this at</p> <p>20 that time was that Christos requested originals to</p> <p>21 be sent to Bouts because there was a purchaser that</p> <p>22 had been found. It was never identified. He asked</p> <p>23 me to notarize them. That's about it.</p> <p>24 Q. Okay. Can you turn, please, to your</p>	<p style="text-align: right;">Page 83</p> <p>1 deposition at page 56. Your deposition. I'm sorry.</p> <p>2 A. Oh.</p> <p>3 Q. Page 56. Line 14, "Question: And do you</p> <p>4 know why Christos would be asking you to courier the</p> <p>5 originals to Bouts?</p> <p>6 "Answer: So, the -- at the time my</p> <p>7 inclination was that they had found a purchaser for</p> <p>8 the position and that originals would need to be</p> <p>9 notarized and couriered to Bouts so the counter</p> <p>10 party could sign." Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Continue on, please, to page 57,</p> <p>13 line 14. "Question: Okay. And as you indicated in</p> <p>14 your testimony, the request to courier the originals</p> <p>15 to Bouts certainly does indicate that the sales is</p> <p>16 close to being finalized.</p> <p>17 "Answer: Correct.</p> <p>18 "Question: Okay. Because, otherwise, you</p> <p>19 wouldn't be asking them to be sent to Bouts,</p> <p>20 correct?</p> <p>21 "Answer: Rephrase the question. It was</p> <p>22 your understanding that the sale was close to being</p> <p>23 finalized because otherwise Christos wouldn't be</p> <p>24 asking them to be couriered to Bouts.</p>
<p style="text-align: right;">Page 84</p> <p>1 "Answer: Correct."</p> <p>2 Did I read that correctly?</p> <p>3 A. You did.</p> <p>4 Q. Let's focus back on your testimony on page</p> <p>5 56. Your answer is. "At that time my inclination</p> <p>6 was that they had found a purchaser for the position</p> <p>7 and that originals would need to be notarized and</p> <p>8 couriered to Bouts so the counter party could sign."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. It says nothing, does it, about the</p> <p>12 purchase agreement being signed and notarized for</p> <p>13 purpose of providing an example to potential buyers,</p> <p>14 does it?</p> <p>15 A. It does not.</p> <p>16 Q. Instead, your testimony is that Mr.</p> <p>17 Skarpelos was going to notarize it and it would be</p> <p>18 forwarded to Bouts to be countersigned by the buyer,</p> <p>19 correct?</p> <p>20 A. My testimony here today?</p> <p>21 Q. Your testimony in your deposition when you</p> <p>22 were under oath.</p> <p>23 A. Oh, if it states that, yes, sir.</p> <p>24 Q. Did you ever tell Mr. Livadas that the</p>	<p style="text-align: right;">Page 85</p> <p>1 originals were never delivered to Mr. Boutsalis?</p> <p>2 A. Why would the originals be delivered to</p> <p>3 Bouts?</p> <p>4 THE COURT: Just answer the question. Did</p> <p>5 you ever --</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. NORK:</p> <p>8 Q. You never told them.</p> <p>9 So, as far as you knew, Mr. Livadas was</p> <p>10 still actively trying to close the deal even after</p> <p>11 July, correct?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Can you turn, please, to Exhibit 40.</p> <p>14 Exhibit 40 has been admitted into evidence. This is</p> <p>15 an email from Christos to Mr. Skarpelos, correct?</p> <p>16 A. Yes.</p> <p>17 Q. You have to read it from the bottom up.</p> <p>18 So, it says -- the subject is "LuLu" and that's you,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. All right. And Mr. Livadas writes, "I</p> <p>22 haven't heard from him in a week. I had everything</p> <p>23 ready for \$ and Christopher to go ahead." Mr.</p> <p>24 Skarpelos responds, "Hi, Bud. He has moved down to</p>

<p style="text-align: right;">Page 86</p> <p>1 the village and working in the vineyard, but I'm</p> <p>2 around if you'd like to chat. Signed, Tom</p> <p>3 Skarpelos."</p> <p>4 Mr. Livadas responds, "So what? He's gone</p> <p>5 to the village? Has he explained nothing to you" --</p> <p>6 two question marks -- "I'll be online in about 45</p> <p>7 minutes." Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Okay. Could the frustration being voiced</p> <p>10 by Mr. Livadas in this email have anything to do</p> <p>11 with the fact that he's still trying to close that</p> <p>12 deal?</p> <p>13 A. I do not know.</p> <p>14 Q. As of October 28th, 2013, had you told Mr.</p> <p>15 Livadas that you had not couriered the original</p> <p>16 purchase and sale agreement to Mr. Boutsalis?</p> <p>17 A. I did not.</p> <p>18 Q. Can you turn, please, to Exhibit 13.</p> <p>19 Exhibit 13 is the corporate indemnity regarding the</p> <p>20 affidavit -- regarding the lost Stock Certificates</p> <p>21 660 and 753, correct?</p> <p>22 A. It appears to be.</p> <p>23 Q. Okay. And Exhibit 14 is an affidavit for a</p> <p>24 lost stock certificate, correct?</p>	<p style="text-align: right;">Page 87</p> <p>1 A. Correct.</p> <p>2 Q. And Exhibit 15 is the Stop Transfer Order</p> <p>3 regarding the alleged lost Stock Certificates 660</p> <p>4 and 753, correct?</p> <p>5 A. Correct.</p> <p>6 Q. At the time these documents were prepared</p> <p>7 in January 10th, 2013, for Exhibit 13, March 28th,</p> <p>8 2013, for Exhibit 14, and March 29th, 2013, for</p> <p>9 Exhibit 15, you had no idea these documents were</p> <p>10 being prepared, correct?</p> <p>11 A. I did not.</p> <p>12 Q. Okay. In fact, Mr. Skarpelos never told</p> <p>13 you that he was preparing these documents, correct?</p> <p>14 A. No.</p> <p>15 Q. This was one of those questions where I ask</p> <p>16 a terrible question and your answer is not clear.</p> <p>17 Let me rephrase the question.</p> <p>18 The question is, Mr. Skarpelos never told</p> <p>19 you that he prepared the three documents we just</p> <p>20 looked at. Is that correct?</p> <p>21 A. Good question. At the time that these were</p> <p>22 being prepared, I didn't know that they were being</p> <p>23 prepared. And I don't remember when and if I found</p> <p>24 out that these documents were placed.</p>
<p style="text-align: right;">Page 88</p> <p>1 It was either in 2014 -- I don't recall,</p> <p>2 and I remember in my deposition that I couldn't</p> <p>3 remember when I found out that there were lost</p> <p>4 certificates and forms in place.</p> <p>5 Q. Let me ask it a different way. You never</p> <p>6 knew at the time the documents were prepared that</p> <p>7 they were being prepared, correct?</p> <p>8 A. No.</p> <p>9 Q. You said "no." I said, "correct."</p> <p>10 THE COURT: Just so we're all clear --</p> <p>11 because I'm the finder of fact -- you did not know</p> <p>12 in 2013 that Exhibits 13, 14, and 15 had been</p> <p>13 prepared. Is that accurate?</p> <p>14 THE WITNESS: That is accurate.</p> <p>15 MR. NORK: Thank you, Judge.</p> <p>16 BY MR. NORK:</p> <p>17 Q. Similarly, Mr. Skarpelos in January through</p> <p>18 March of 2013, did he ever tell you that he was</p> <p>19 worried about his stock certificates at W.A.M.?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. And just to clarify your answer to the</p> <p>22 Court's question, the Court's question was, You</p> <p>23 never found out about these documents, Exhibits 13,</p> <p>24 14, and 15, in all of 2013 but at least you didn't</p>	<p style="text-align: right;">Page 89</p> <p>1 know at the time they were being prepared, correct?</p> <p>2 A. I didn't know at the time that they were</p> <p>3 being prepared.</p> <p>4 Q. Can you turn, please, to page 44 of your</p> <p>5 deposition.</p> <p>6 THE COURT: Is this on the same subject?</p> <p>7 MR. NORK: This is a good time, actually,</p> <p>8 your Honor.</p> <p>9 THE COURT: Because we're just about</p> <p>10 quarter after ten. So, Counsel, we'll be in recess</p> <p>11 for approximately 15 minutes.</p> <p>12 (Recess taken.)</p> <p>13 THE COURT: Please be seated. We'll go</p> <p>14 back on the record in CV15-02259, Skarpelos vs.</p> <p>15 Weiser. You can resume the stand, sir. Thank you.</p> <p>16 Parties are all present. Mr. Nork, you may continue</p> <p>17 your cross-examination.</p> <p>18 MR. NORK: Thank you, your Honor.</p> <p>19 BY MR. NORK:</p> <p>20 Q. One thing I didn't follow up on when you</p> <p>21 mentioned it, it had to do with when Mr. Livadas</p> <p>22 introduced you to the owners of Verdmont.</p> <p>23 Do you recall when that was?</p> <p>24 A. In Amsterdam in 2013.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Do you recall when in 2013?</p> <p>2 A. It was either September, I believe --</p> <p>3 August, September.</p> <p>4 Q. We talked about Exhibits 13, 14, and 15.</p> <p>5 And just to be clear, you indicated you were not</p> <p>6 aware of these documents.</p> <p>7 Do you have any recollection of ever</p> <p>8 assisting Mr. Skarpelos in translating these</p> <p>9 documents in or about the time they were signed?</p> <p>10 A. I did not have anything to do with these</p> <p>11 documents at that time.</p> <p>12 MR. NORK: I think I have a housekeeping</p> <p>13 matter, your Honor. I move to admit Exhibit 19.</p> <p>14 MR. ANDERSON: Court's indulgence for a</p> <p>15 moment, please. I think I would just assert the</p> <p>16 same hearsay and relevance objections that I did to</p> <p>17 the prior similar exhibit. I can't remember which</p> <p>18 one that was.</p> <p>19 THE COURT: Eighteen?</p> <p>20 MR. ANDERSON: Thank you. Yes, your Honor.</p> <p>21 Same objections as 18.</p> <p>22 THE COURT: The court analyzes Exhibit 19</p> <p>23 in a slightly different fashion than it analyzes the</p> <p>24 previous exhibit in that the admission. The court</p>	<p style="text-align: right;">Page 91</p> <p>1 finds it is hearsay, but with Exhibit 19 there's</p> <p>2 actually a hearsay exception that applies. The</p> <p>3 testimony of the witness was slightly different</p> <p>4 regarding Exhibit 19.</p> <p>5 The hearsay -- the court finds it's</p> <p>6 hearsay, just like the previous time the court found</p> <p>7 it was hearsay, but now this is not a prior</p> <p>8 inconsistent statement. It's a past recollection</p> <p>9 recorded under NRS 51.125. Subsection 1 of that</p> <p>10 statute says, "A memorandum or recording concerning</p> <p>11 a matter about which a witness once had knowledge</p> <p>12 but now has insufficient recollection to enable the</p> <p>13 witness to testify fully and accurately is not</p> <p>14 inadmissible under the hearsay rule if it is shown</p> <p>15 to be made when the matter was fresh in the</p> <p>16 witness's memory and to reflect that knowledge</p> <p>17 correctly."</p> <p>18 Subsection 2 says, "The memorandum or</p> <p>19 record may be read into evidence but may not itself</p> <p>20 be received unless offered by an adverse party."</p> <p>21 And the average party is offering it, so</p> <p>22 while the court finds that Exhibit 19 is hearsay,</p> <p>23 the exception under 51.125, commonly referred to as</p> <p>24 a past recollection recorded, applies under the</p>
<p style="text-align: right;">Page 92</p> <p>1 circumstances of this case and, therefore, Exhibit</p> <p>2 19 will be admitted over objection regarding both</p> <p>3 hearsay and relevance. Go ahead, Mr. Nork.</p> <p>4 BY MR. NORK:</p> <p>5 Q. And then when we left off just before the</p> <p>6 break, Mr. Pedafronimos, we were talking about the</p> <p>7 affidavit of lost stock certificate and the fact</p> <p>8 that Mr. Skarpelos had never told you that he was</p> <p>9 worried about his stock certificates that he had</p> <p>10 left with Mr. Daniels in The Bahamas, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And this is despite the fact that</p> <p>13 you went with him to open the account, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And despite the fact that you were in</p> <p>16 communications with him at or about that same time</p> <p>17 frame about selling his stock, correct?</p> <p>18 A. Much later with regards to selling the</p> <p>19 stock.</p> <p>20 Q. Well, you talked about selling the stock at</p> <p>21 least as early as March 2013, correct?</p> <p>22 A. Late March.</p> <p>23 Q. Okay. And the Affidavit for Lost Stock</p> <p>24 Certificate, Exhibit 14, and the Stop Transfer</p>	<p style="text-align: right;">Page 93</p> <p>1 Order, Exhibit 15, are also in late March 2013,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. So, right at the same time that Mr.</p> <p>5 Skarpelos is executing his affidavit and his Stop</p> <p>6 Transfer Order, he is asking you to assist him in</p> <p>7 selling some of his positions, correct?</p> <p>8 A. To communicate with purchasers, yes.</p> <p>9 Q. And he never -- despite that, never told</p> <p>10 you that he had just submitted an affidavit to have</p> <p>11 those stock certificates canceled, correct?</p> <p>12 A. To my recollection, no.</p> <p>13 Q. Okay. You find that unusual?</p> <p>14 A. My personal opinion?</p> <p>15 Q. Yes, sir.</p> <p>16 A. Based on the exhibits and everything I've</p> <p>17 seen --</p> <p>18 Q. Do you find it unusual that at the same</p> <p>19 time he asked you to help sell his stock, he was</p> <p>20 canceling the stock certificates?</p> <p>21 A. I can't give my personal opinion --</p> <p>22 Q. You have no opinion?</p> <p>23 A. -- on the matter. No opinion.</p> <p>24 Q. When did you learn that Mr. Livadas had</p>

<p style="text-align: right;">Page 94</p> <p>1 learned about the canceled stock certificates?</p> <p>2 A. From my recollection, there was a pin</p> <p>3 message that was sent to me in late October from</p> <p>4 Christos which said there's red flags going up at</p> <p>5 the transfer agent.</p> <p>6 Q. Okay. You said October. October of what</p> <p>7 year, please?</p> <p>8 A. 2013.</p> <p>9 Q. Turn in your deposition to page 66. Starts</p> <p>10 at line 15, "Question: Okay. I may have asked you</p> <p>11 this before. But did you ever become aware that</p> <p>12 Christos had learned that the stocks had been deemed</p> <p>13 lost?</p> <p>14 "Answer: In October 2013.</p> <p>15 "Question: And how are you able to</p> <p>16 pinpoint that date?</p> <p>17 "Answer: It was from a message sent to me.</p> <p>18 "Question. From?</p> <p>19 "Answer: Christos."</p> <p>20 "Question: And what was the topic.</p> <p>21 "Answer: There's red flags going up at the</p> <p>22 transfer agent" and that's in quotes.</p> <p>23 "Question: And what did you understand</p> <p>24 that to mean?</p>	<p style="text-align: right;">Page 95</p> <p>1 "Answer: That something happened at the</p> <p>2 transfer agent.</p> <p>3 "Question: Was that the first time that</p> <p>4 you learned that the stocks had been deemed lost?</p> <p>5 "Answer: Yes."</p> <p>6 Did I read that correctly.</p> <p>7 A. Correct.</p> <p>8 Q. Is that your recollection?</p> <p>9 A. Yes.</p> <p>10 Q. And you have now testified both in your</p> <p>11 deposition and today pretty much word for word as to</p> <p>12 the content of the message you received from Mr.</p> <p>13 Livadas in October 2013, correct?</p> <p>14 A. With regards to the content and subject</p> <p>15 matter, yeah.</p> <p>16 Q. And that is there's red flags going up at</p> <p>17 the transfer agent, correct?</p> <p>18 A. Yes.</p> <p>19 Q. October 2013?</p> <p>20 A. Correct.</p> <p>21 Q. By the way, did you ever ask Mr. Skarpelos</p> <p>22 why he never told you he filed the affidavit of lost</p> <p>23 certificate?</p> <p>24 A. I don't believe we had that discussion.</p>
<p style="text-align: right;">Page 96</p> <p>1 Q. Never talked about it at all?</p> <p>2 A. At that time.</p> <p>3 Q. Okay. When was the first time you talked</p> <p>4 about it?</p> <p>5 A. Like I said in my deposition, I don't</p> <p>6 recall exact -- give an approximate date or month or</p> <p>7 time period.</p> <p>8 THE COURT: Am I supposed to infer from</p> <p>9 that that you did have a discussion, you just don't</p> <p>10 remember what it was?</p> <p>11 THE WITNESS: Correct. No. There was a</p> <p>12 discussion much later on, though -- maybe it was</p> <p>13 prior to -- prior to discovery. It was late,</p> <p>14 though.</p> <p>15 BY MR. NORK:</p> <p>16 Q. Okay. I want to break my question into two</p> <p>17 parts. One, did you ever have conversations with</p> <p>18 Mr. Skarpelos about why he filed the affidavit?</p> <p>19 A. No.</p> <p>20 Q. You've never talked to him about that at</p> <p>21 all ever?</p> <p>22 A. Conversations of why he filed the</p> <p>23 affidavit?</p> <p>24 Q. Yes, sir.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. No.</p> <p>2 Q. Okay. So, you have no idea as you sit here</p> <p>3 today.</p> <p>4 A. No. As I sit here today, I know why he</p> <p>5 filed his affidavit based on everything that's come</p> <p>6 to -- can you help me with the word?</p> <p>7 Q. I don't want to cut you off.</p> <p>8 Let me ask you this: Until this litigation</p> <p>9 started, did you have any idea of why Mr.</p> <p>10 Skarpelos --</p> <p>11 A. No.</p> <p>12 Q. -- filed the affidavit?</p> <p>13 A. No.</p> <p>14 Q. And the answer's "no"?</p> <p>15 A. No.</p> <p>16 Q. Okay. And the other part of that question</p> <p>17 is, Did you ever have conversations with Mr.</p> <p>18 Skarpelos about why he never told you about it?</p> <p>19 A. No. I wasn't privy to his personal</p> <p>20 business.</p> <p>21 Q. Okay. And by the way, did you know that in</p> <p>22 October 2013 Mr. Skarpelos was giving away some of</p> <p>23 his shares of Anavex stock?</p> <p>24 A. No.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. When did you first become aware of that?</p> <p>2 A. I don't believe I did at that time.</p> <p>3 Q. Let me ask you this: Why was Mr. Livadas</p> <p>4 in touch with the transfer agent in October 2013?</p> <p>5 A. I don't know.</p> <p>6 Q. Did you ask him?</p> <p>7 A. I wouldn't need to ask him. I didn't ask</p> <p>8 him. No, I didn't.</p> <p>9 Q. What transfer agent is being referred to?</p> <p>10 A. Probably. I'm assuming it was the transfer</p> <p>11 agent NATCO.</p> <p>12 Q. Okay. And at least we know in October 2013</p> <p>13 the potential sale to Chinese investors had never</p> <p>14 gone through, correct?</p> <p>15 A. Correct.</p> <p>16 Q. How many months after April is</p> <p>17 October 2013?</p> <p>18 A. Eight months, I believe. I'm not --</p> <p>19 Q. I think it's six months. April is the</p> <p>20 fourth month and October is the tenth.</p> <p>21 A. Yeah, you're correct.</p> <p>22 Q. So, six months after April 2013 Mr. Livadas</p> <p>23 told you that he was in touch with the transfer</p> <p>24 agent and that there were red flags going up at the</p>	<p style="text-align: right;">Page 99</p> <p>1 transfer agent.</p> <p>2 A. He didn't tell me that he was in touch with</p> <p>3 the transfer agent. He sent me a pin message</p> <p>4 stating red flags are going up at the transfer</p> <p>5 agent.</p> <p>6 Q. Okay. And that was six months after April?</p> <p>7 A. That was in mid to late October, yes.</p> <p>8 Q. Okay. Do you have any understanding that</p> <p>9 Mr. Livadas was in touch with the transfer agent in</p> <p>10 October of 2013 to dematerialize the stock that had</p> <p>11 been sold in April of 2013?</p> <p>12 A. No.</p> <p>13 Q. And it didn't in any way raise a question</p> <p>14 in your mind that Mr. Livadas told you in October of</p> <p>15 2013 that he was in touch with the transfer agent.</p> <p>16 A. He didn't state that he was in touch with</p> <p>17 the transfer agent. He stated that there's red</p> <p>18 flags going up at the transfer agent.</p> <p>19 Q. Did you have any understanding of how he</p> <p>20 knew that?</p> <p>21 A. No.</p> <p>22 Q. Okay. We have talked about a couple</p> <p>23 examples, email examples of you requesting funds</p> <p>24 from your Vermont account via Mr. Livadas, correct?</p>
<p style="text-align: right;">Page 100</p> <p>1 A. Can you rephrase the question?</p> <p>2 Q. Okay. We have had discussions already --</p> <p>3 A. Yes.</p> <p>4 Q. -- about you asking Mr. Livadas via emails</p> <p>5 to assist you in receiving funds from your Vermont</p> <p>6 account, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Can you recall other instances in which you</p> <p>9 had funds wired out of your Vermont account?</p> <p>10 A. Off the top of my head?</p> <p>11 Q. Yes, sir.</p> <p>12 A. No.</p> <p>13 Q. Do you recall a wire transfer coming out of</p> <p>14 your Vermont account in April of 2013?</p> <p>15 A. I can't recall wire transfer records from</p> <p>16 April.</p> <p>17 Q. Do you recall seeing a document to that</p> <p>18 effect in your deposition?</p> <p>19 A. I do.</p> <p>20 Q. And would seeing that document refresh your</p> <p>21 recollection?</p> <p>22 A. It might.</p> <p>23 Q. Let's turn, please, to Exhibit 17.</p> <p>24 MR. ANDERSON: Your Honor, I have a</p>	<p style="text-align: right;">Page 101</p> <p>1 procedural objection to this before the witness</p> <p>2 looks at it.</p> <p>3 THE COURT: Okay. What's the procedural</p> <p>4 objection?</p> <p>5 MR. ANDERSON: Your Honor, discovery closed</p> <p>6 in this matter on February, I believe, 2nd or 8th of</p> <p>7 2018. This document was provided to my office in</p> <p>8 October of 2018 for the first time and it was about</p> <p>9 a week prior or two days or three days prior before</p> <p>10 we left for the deposition in Athens.</p> <p>11 So, if the Court will recall, there was</p> <p>12 some motion in limine briefing and I think the</p> <p>13 motion involved our request, Mr. Skarpelos' request</p> <p>14 to exclude any documents purporting to show any sort</p> <p>15 of payment in this matter that hadn't been produced</p> <p>16 prior to close of discovery. If I recall correctly,</p> <p>17 opposing counsel filed an opposition brief that</p> <p>18 basically stipulated to that fact and that was the</p> <p>19 Court's adopted conclusion.</p> <p>20 So, these documents are well after the</p> <p>21 close of discovery. There's no apparent reason they</p> <p>22 couldn't have been discovered earlier, at least not</p> <p>23 explained to me. So, I would move the Court that</p> <p>24 they not be allowed to inquire of the witness or</p>



<p style="text-align: right;">Page 102</p> <p>1 offer to admit these documents. And there are  2 several other on the procedural ground that they  3 have failed to comply with the rules of discovery.  4 MR. NORK: Your Honor, we don't intend to  5 offer it for admission. I'm using it to refresh the  6 recollection of Mr. Pedafronimos.  7 THE COURT: So, cite me to a case, Mr.  8 Anderson, that addresses that specific issue.  9 They're marked as exhibits. The Court will never  10 look at them and never consider them, because I  11 would sustain the objection if there was a request  12 to admit them.  13 As we discussed before with motions in  14 limine at bench trials, the Court has to look at  15 evidence and excludes things, even though it's  16 looked at them in the past. So, I'm just glancing  17 at Exhibit 17 and it looks like it's something from  18 an HSBC account.  19 Even if it wouldn't violate the motion in  20 limine prohibition and the order of the Court has  21 entered, I have no idea how Mr. Nork would lay the  22 foundation to admit this exhibit in this first  23 place. So, it's not being offered, it will never be  24 offered to be admitted. Mr. Nork's representation</p>	<p style="text-align: right;">Page 103</p> <p>1 is he's just using it to refresh the witness's  2 recollection. Why can't he use, as I've said  3 before, anything to refresh the witness's  4 recollection disclosed or undisclosed.  5 Theoretically he could bring in a picture  6 of the witness's sister to refresh his recollection  7 about what he was doing in the third grade. It  8 doesn't mean it gets admitted. If it doesn't  9 refresh his recollection, then we move on.  10 MR. ANDERSON: Your Honor, I'm aware of the  11 extraordinarily broad refreshing recollection  12 parameters. My understanding of this document being  13 included in here is it was going to be offered, that  14 the witness would be inquired about it from the  15 contents of the documents and they would ask that it  16 be admitted and I was going to object on the  17 procedural ground before that happened.  18 THE COURT: Okay.  19 MR. ANDERSON: I do agree with the Court.  20 I don't know why they wouldn't be able to use it  21 just to refresh recollection as to a question but  22 wanted to assert that procedural objection.  23 THE COURT: Okay. Just so the record is  24 clear, Mr. Nork, you may use that exhibit and any</p>
<p style="text-align: right;">Page 104</p> <p>1 similar exhibits merely to refresh the witness's  2 recollection.  3 Again, the procedure for refreshing  4 recollection is, number one, the witness says that  5 he doesn't recall something. Number two, you ask  6 him if something would refresh his recollection. He  7 can look at it. Then he stops looking at it; that  8 is, he turns it over or closes the binder. And then  9 you can ask him, Did you refresh your recollection,  10 and he can answer the question and you go from  11 there.  12 But it will never be admitted based on the  13 Court's previous ruling on the motion in limine  14 absent some additional argument.  15 So, start again with the question itself  16 that you're asking, Mr. Nork.  17 BY MR. NORK:  18 Q. The question is, Do you recall when you  19 requested funds to be wired out of your Vermont  20 account in 2013?  21 A. No.  22 Q. Okay. Please look at Exhibit 17.  23 Does that refresh your recollection?  24 A. No.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. It does not refresh your recollection?  2 A. It appears to be --  3 THE COURT: Don't tell him what it appears  4 to be. Look at it. Now, close the book.  5 THE WITNESS: Okay.  6 THE COURT: Ask him the question again.  7 Does it refresh your recollection?  8 BY MR. NORK:  9 Q. Does it refresh your recollection?  10 A. Yes.  11 Q. Okay. What was -- when did you have funds  12 transferred out of your Vermont account in 2013?  13 A. In April of 2013.  14 Q. Okay. Do you recall how much?  15 A. At the quick glance, no.  16 Q. Looking at this document, would it refresh  17 your recollection?  18 A. Yes.  19 Q. Please look at the document.  20 (Witness reviewing document.)  21 BY MR. NORK:  22 Q. Please stop looking at the document. What  23 was the amount?  24 A. It appears to be \$10,000.</p>

<p style="text-align: right;">Page 106</p> <p>1 THE COURT: No, stop. That's not the 2 appropriate question and response. I'm not trying 3 to be overly pedantic about this. When he says, "It 4 appears to be \$10,000," he's testifying from the 5 document. 6 MR. NORK: You're right, your Honor. I 7 agree. 8 THE COURT: I'll allow you to ask him the 9 question again. 10 BY MR. NORK: 11 Q. The question was, Do you recall how much 12 the wire transfer was in April of 2013? 13 Do you recall? 14 A. No. 15 Q. Would reviewing Exhibit 17 refresh your 16 recollection? 17 A. It would. 18 Q. Okay. Please look at the document. 19 (Witness reviewing document.) 20 BY MR. NORK: 21 Q. Please close the document. 22 Is your recollection refreshed? 23 A. Yes. 24 Q. How much was it?</p>	<p style="text-align: right;">Page 107</p> <p>1 A. \$10,000. 2 Q. Thank you. 10,000 what? 3 A. Euros. 4 Q. Okay. Do you recall another wire transfer 5 coming out of your Vermont account in July of 2013? 6 A. I do not. 7 Q. Please -- would a document refresh your 8 recollection? 9 A. It might. 10 Q. Can you please turn to Exhibit 37. 11 A. Okay. 12 Q. Is your recollection refreshed? 13 A. It is. 14 Q. What is your recollection? 15 A. It says "\$15,000." I can't verify the 16 authenticity of this document. 17 Q. I understand. I'm asking about your 18 refreshed recollection. Having looked at the 19 document, you testified your recollection is 20 refreshed, correct? 21 A. Based on what I saw on the document. I 22 don't remember what wire transfers were going in or 23 out of that account. 24 Q. Okay.</p>
<p style="text-align: right;">Page 108</p> <p>1 A. So, I'm seeing these for the first time 2 where I saw them in the deposition in Athens and I 3 saw them here again today. I can't authenticate 4 that this is a true and accurate copy. Nobody's 5 identified other than Vermont Capital. 6 Q. I understand that, sir. But you have 7 testified that wire transfers came out of your 8 Vermont account, correct? 9 A. They do. 10 Q. And you have further testified that this 11 document has refreshed your recollection, correct? 12 A. I can't authenticate that this -- at face 13 value it appears to be a wire transfer from 14 Vermont. 15 THE COURT: Mr. Pedafronimos, I'm going to 16 tell you right now, it's not your job to make 17 evidentiary rulings or authenticate documents. 18 That's not the question. 19 Just listen to Mr. Nork's question. And I 20 let you make your argument once before and now 21 you're just making it again, so that's why I 22 interjected myself into the proceedings. 23 But listen to his question. His question 24 isn't, Can you authenticate this document? His</p>	<p style="text-align: right;">Page 109</p> <p>1 question is, Does it refresh your recollection. It 2 doesn't matter if it's authenticated or not. Just 3 what is your mindset? What is your mind like now 4 having reviewed the document, regardless of what the 5 document is. Mr. Nork. 6 BY MR. NORK: 7 Q. Is your recollection refreshed as to when 8 you made a wire transfer in July of 2013? 9 A. Yes. 10 Q. And how was it refreshed? 11 A. By looking at the document. 12 Q. Okay. And when approximately, in light of 13 your refreshed recollection, was the wire transfer? 14 A. Which wire transfer? 15 Q. The one in 2013. 16 A. Which one? 17 Q. The one in July. 18 A. In July of 2013? 19 Q. Okay. And do you have a recollection of 20 the amount of that transfer? 21 A. 15,000. 22 Q. 15,000 euros or U.S.? 23 A. Euros. 24 Q. Do you have a recollection of another wire</p>

<p style="text-align: right;">Page 110</p> <p>1 transfer in August of 2013?</p> <p>2 A. No.</p> <p>3 Q. Would a document refresh your recollection?</p> <p>4 A. It might.</p> <p>5 Q. Turn, please, to Exhibit 38.</p> <p>6 (Witness reviewing document.)</p> <p>7 BY MR. NORK:</p> <p>8 Q. Is your recollection refreshed?</p> <p>9 A. Yes.</p> <p>10 Q. When was the wire transfer?</p> <p>11 A. In August, I believe.</p> <p>12 Q. Of 2013?</p> <p>13 A. Correct.</p> <p>14 Q. And what was the amount?</p> <p>15 A. 15,000.</p> <p>16 Q. Do you have a recollection of the amount?</p> <p>17 A. 15,000 euros.</p> <p>18 Q. Thank you. And, finally, do you have a</p> <p>19 recollection of a wire transfer in September of</p> <p>20 2013?</p> <p>21 A. I do not.</p> <p>22 Q. Would a document refresh your recollection?</p> <p>23 A. Yes.</p> <p>24 Q. Please turn to Exhibit 39.</p>	<p style="text-align: right;">Page 111</p> <p>1 Is your recollection refreshed?</p> <p>2 A. It is.</p> <p>3 Q. When was the wire transfer?</p> <p>4 A. In September 2013.</p> <p>5 Q. And do you have a recollection of the</p> <p>6 amount?</p> <p>7 A. Euros, 7500.</p> <p>8 Q. Can you turn, please, to Exhibit 17 -- I'm</p> <p>9 sorry. There's no question pending, if you're going</p> <p>10 to refresh your recollection.</p> <p>11 MR. NORK: I made a mistake, your Honor.</p> <p>12 BY MR. NORK:</p> <p>13 Q. Turn, please, to Exhibit 19. This document</p> <p>14 is admitted into evidence. It is your email to Mr.</p> <p>15 Livadas closing bank information.</p> <p>16 What's the date of the email?</p> <p>17 A. Is it the day-month?</p> <p>18 Q. Yes.</p> <p>19 A. September 5th, 2013.</p> <p>20 Q. I'm sorry. It's the other way around.</p> <p>21 Month, day.</p> <p>22 A. May 9th, 2013.</p> <p>23 Q. Turn, please, to Exhibit 18 -- actually,</p> <p>24 turn to Exhibit 59. This is one of those emails you</p>
<p style="text-align: right;">Page 112</p> <p>1 have to read from the bottom up. The first one is</p> <p>2 an email. It's the quadruple bypass email, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And it's from you to Mr. Livadas April of</p> <p>5 2013, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And then there's an email from Mr. Livadas</p> <p>8 to an individual named Rainbow, and what does that</p> <p>9 email say?</p> <p>10 A. "Would you like for me to read it?"</p> <p>11 Q. Please.</p> <p>12 A. "Hi, R, can you transfer 20,000" symbol U.S</p> <p>13 dollars -- "as shareholder withdrawal to details</p> <p>14 below, period. as soon as possible period, period.</p> <p>15 Tom had heart attack and is waiting for payments to</p> <p>16 stay alive."</p> <p>17 Q. Okay. What is the date of that email from</p> <p>18 Mr. Livadas to Rainbow?</p> <p>19 A. It's January, February -- April 26th, 2013.</p> <p>20 Q. That's Exhibit 59, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Turn, please, to Exhibit 44. Second</p> <p>23 page, please. Do you have it?</p> <p>24 A. Yes, I do.</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. Okay. I apologize for the quality of the</p> <p>2 copy, but what is the opening balance listed for</p> <p>3 February 1, 2013?</p> <p>4 A. Under "Debit"?</p> <p>5 Q. It says "Opening balance" under "Activity."</p> <p>6 A. Yes. I see it.</p> <p>7 Q. Does it look like "\$140,288"?</p> <p>8 A. It does.</p> <p>9 Q. February 1, 2013?</p> <p>10 A. Correct.</p> <p>11 Q. Then two entries down there's a listing for</p> <p>12 a stock sale. You see that on April 2nd, 2013?</p> <p>13 A. I do.</p> <p>14 Q. And what's the value credited to the</p> <p>15 account for the stock sale?</p> <p>16 A. It states \$249,580.</p> <p>17 Q. Then the next entry is a wire transfer.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. What is the date of the wire transfer</p> <p>21 listed on Exhibit 44?</p> <p>22 A. 05/9/2013.</p> <p>23 Q. What's the amount?</p> <p>24 A. The value shown here is --</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. Let me help you out. There's been 2 testimony that the amount under "Activity" is euros, 3 but the amount under the debit column is converted 4 to U.S. dollars. Can you please tell me how much 5 that is in euros? 6 A. 15,000 euros. That's weird. 7 Q. The next entry of wire transfer is 8 May 22nd, 2013. Do you see that? 9 A. May? 10 Q. Yes, sir. 11 A. May what? 12 Q. Twenty-second. 13 A. 2013? 14 Q. Yes. 15 A. Yes. 16 Q. And this shows the amount is euros and 17 what's the amount in U.S. dollars? 18 A. 20,000. 19 Q. Actually, I skipped one. Can you please go 20 up to March 25th, 2013. What's the amount of that 21 wire transfer? 22 A. In euro or U.S. dollars? 23 Q. Euros, please. 24 A. 10,000.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. Continuing on, can you turn, please, 2 to the next wire transfer in July of 2013. 3 Do you see the date? 4 A. Um, 2nd of July, if I'm not mistaken. 5 Q. Yes. How much was that? 6 A. My mistake. Is it June or July? 7 Q. It's July. How much is that in euros? 8 A. In euros it states "15,000." 9 Q. Next one is in August, August 6th, 2013. 10 Do you see that? 11 A. Yes. 12 MR. ANDERSON: Your Honor, can I move to 13 the well to see? 14 THE COURT: Yes. 15 BY MR. NORK: 16 Q. And what's the amount of that in euros? 17 A. Shows "15,000." 18 Q. Finally, there's one in September of 2013. 19 Do you see that? 20 A. September 18th, 2013. 21 Q. What's the amount for that? 22 A. 7,500. 23 Q. Euros? 24 A. It says "EUR," yes.</p>
<p style="text-align: right;">Page 116</p> <p>1 Q. I guess the final question is, So, are you 2 still on Exhibit 44? 3 A. I am. 4 Q. What's the final balance? 5 A. On the first page? 6 Q. No. On the second page after the 7 September 18th, 2013, 7,500 euro wire, the remaining 8 balance. 9 A. The remaining balance shows a value of 10 4,115 and 36. 11 Q. Okay. Now, it was your testimony, was it 12 not, during your deposition that your fund 13 withdrawals from your Vermont account had nothing 14 to do with W.A.M., correct? 15 A. Correct. 16 Q. And that your fund withdrawals were simply 17 to cover your personal expenses, correct? 18 A. Correct. 19 Q. And they bore no relationship whatsoever to 20 the available balance in the W.A.M. account, 21 correct? 22 A. Correct. 23 Q. Notwithstanding that, we see that after 24 your recollection was refreshed that you had a 7,500</p>	<p style="text-align: right;">Page 117</p> <p>1 euro withdrawal in September of 2013, correct? 2 A. Correct. 3 Q. Which is half of what your prior 4 withdrawals had been, correct? 5 A. Correct. 6 Q. And we also know in looking at Exhibit 44 7 that, according to Exhibit 44, there wasn't enough 8 money in the W.A.M. account to cover a 15,000 euro 9 withdrawal in September of 2013. 10 Do you agree with that mathematically? 11 A. Can you repeat the question? 12 Q. Yes, sir. My question is, In looking at 13 Exhibit 44, was there enough money listed in the 14 W.A.M. account on this statement to cover a 15,000 15 euro withdrawal in September of 2013? 16 A. Mathematically. 17 Q. That's correct. 18 A. I don't believe so. 19 Q. Because there wasn't enough money in the 20 account, correct? 21 A. From what I see here -- 22 Q. Yes, sir. 23 A. -- correct. Yes. 24 Q. Okay. Now, for Exhibit 19, that is your</p>

<p style="text-align: right;">Page 118</p> <p>1 email to Mr. Livadas disclosing bank information,  2 and that's May 9th, 2013, correct?  3 A. Appears to be, yes.  4 Q. And it lines up exactly with the date of  5 the entry in Exhibit 44, does it not?  6 A. It does.  7 Q. Exhibit 59, the dollar amount requested by  8 Mr. Livadas of Rainbow lines up exactly with the  9 entry in Exhibit 44 of 20,000 U.S. dollars, correct?  10 A. For which? What is the date? The dollar  11 amount.  12 Q. There's a twenty-thousand-dollar entry in  13 Exhibit 44, correct?  14 A. U.S.D?  15 Q. Yes, sir.  16 A. The amount, there's a value that says  17 20,000, correct.  18 Q. Okay. And then there are also four entries  19 on Exhibit 44 that line up exactly in terms of the  20 amount and in terms of the month for all of your  21 withdrawals from your Vermont account that you  22 testified to after your recollection was refreshed,  23 correct?  24 A. From the HSBC documents you're referring</p>	<p style="text-align: right;">Page 119</p> <p>1 to?  2 Q. Yes, sir.  3 A. You're stating that there's four that  4 match?  5 Q. Yes, sir.  6 A. I would have to verify that for myself.  7 MR. ANDERSON: Your Honor, I'm going to  8 object to the witness testifying -- it sounded like  9 he was being asked if they match up with the  10 documents that are excluded from evidence.  11 MR. NORK: If I said that, my apology.  12 THE COURT: Rephrase.  13 BY MR. NORK:  14 Q. My question was, We had already noted that  15 your recollection was refreshed about a 10,000 euro  16 transaction in April of 2013.  17 A. Correct.  18 Q. And there was a 10,000 euro transaction  19 listed on Exhibit 44, correct, in March?  20 A. There's a value of 10,000, yes.  21 Q. Then your recollection was refreshed that  22 you had a July 2013 transaction involving 15,000  23 euros, correct?  24 A. Correct.</p>
<p style="text-align: right;">Page 120</p> <p>1 Q. And there also was an entry on Exhibit 44  2 for 15,000 euros in July, correct?  3 A. Correct.  4 Q. Your recollection was refreshed that you  5 had an August 2013 transaction for 15,000 euros,  6 correct?  7 A. From where? From the HSBC document?  8 Q. Yes.  9 A. Yes.  10 Q. Okay. And there was similarly a  11 corresponding entry in Exhibit 44, correct?  12 A. There was an entry, yes.  13 Q. Okay. And then, finally, your recollection  14 was refreshed that you had a September 2013  15 transaction for 7,000 500 euros, correct?  16 A. Correct.  17 Q. And there's similarly a corresponding entry  18 that lines up on Exhibit 44, correct?  19 A. I would have to verify these for myself.  20 The -- I understand and I agree with you that my  21 memory was refreshed on the HSBC document, but in  22 order for these to be valid, I'd have to see the  23 dates, the value dates, the execution dates.  24 Q. My question is just, Does Exhibit 44 show a</p>	<p style="text-align: right;">Page 121</p> <p>1 transaction for 7,500 euros in September of 2013?  2 A. Yes, it does.  3 Q. Okay.  4 A. Thank you.  5 Q. Now, you testified right when we came back  6 from the break that you didn't meet Taylor and Glynn  7 at Vermont until October 2013, right?  8 A. September, October of 2013, I believe.  9 Q. So, who was your contact at Vermont? I  10 understand your testimony this morning -- early this  11 morning to be that you would contact Taylor and  12 Glynn at Vermont to request a wire transfer --  13 A. Correct.  14 Q. -- that you couldn't reach them, so then  15 you contacted Mr. Livadas.  16 A. Correct.  17 Q. And he would somehow assist you, even  18 though he wasn't a signatory on your account,  19 correct?  20 A. Correct.  21 Q. But you just testified that you were  22 introduced to Taylor and Glynn in September, October  23 2013, correct?  24 A. Correct. I knew of Taylor and Glynn</p>

<p style="text-align: right;">Page 122</p> <p>1 because face to face it was the first introduction.  2 I hadn't met them face to face before. We were in  3 Amsterdam for five days and that's what I testified  4 to before.  5 Q. Okay. You were aware of them but you --  6 A. Over the phone, introduced face to face.  7 Q. I see. So, it's your testimony as you sit  8 here today that the transfers that we talked about  9 refreshing your recollection, they all consist of  10 you first trying to reach someone at Verdmont and  11 then trying to reach Mr. Livadas, correct?  12 A. Can you repeat the question?  13 Q. Your testimony is that your -- the process  14 you followed in order to receive wire transfers from  15 your Verdmont account, even as early as April of  16 2013, consisted of you requesting funds initially  17 from people at Verdmont, and when that was  18 successful, you'd contact Mr. Livadas.  19 A. Correct.  20 Q. And is that true even as far back as  21 December 2012 as evidenced in Exhibit 12?  22 A. Yes.  23 MR. NORK: Thank you, sir. I have nothing  24 further.</p>	<p style="text-align: right;">Page 123</p> <p>1 THE COURT: Redirect based on the  2 cross-examination?  3 MR. ANDERSON: Yes, your Honor. Thank you.  4 REDIRECT EXAMINATION  5 BY MR. ANDERSON:  6 Q. Mr. Pedafronimos, Mr. Nork presented some  7 documents to you to refresh your recollection, and I  8 think you kinda generally referred to them as the  9 "HSBC documents."  10 Did you provide those documents to Mr. Nork  11 or Mr. Livadas?  12 A. I did not.  13 Q. Okay. Do you know how one would go about  14 obtaining such documents without your authorization?  15 A. Providing documentation on private details  16 or private banking information from an account in  17 Panama. It's supposed to be protected so they would  18 need either Nik's or my consent in order for those  19 documents to be presented here, other than having  20 access through their personal employees or  21 friendships with one of the principals.  22 Q. Okay. And you say your consent or Nik's.  23 Is that your father?  24 A. Yeah.</p>
<p style="text-align: right;">Page 124</p> <p>1 Q. And neither of you ever gave Mr. Livadas  2 consent?  3 A. No.  4 Q. Okay. Did either you or Nikolaos ever give  5 W.A.M. consent?  6 A. For what?  7 Q. To obtain your bank records.  8 A. No.  9 Q. Okay. And who would have had custody of  10 your bank records?  11 A. Verdmont.  12 Q. Okay. And is that the same company that's  13 under investigation by the SEC --  14 A. Yes.  15 Q. -- and is out of business now?  16 A. Correct.  17 Q. Your bank statements that you refreshed  18 your recollection or the documents you looked at to  19 refresh your recollection, do you recall what date  20 they were generated?  21 A. I do not.  22 Q. Okay. Is it reasonable to assume they  23 would have been generated at or about the time that  24 the transactions demonstrated?</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Can I refresh my memory by looking at --  2 Q. I'm just asking you a general question.  3 Do banks generally generate documents at or  4 about the time of the transactions?  5 A. They do, yes.  6 Q. Okay. And you were asked some questions by  7 Mr. Nork and I think you mentioned you would want to  8 know with respect to a particular transaction or  9 looking at a document value dates or execution  10 dates. Would you explain what you meant by that,  11 please?  12 A. So, a value date is when the funds are  13 supposed to land in your account. The execution  14 date is when it leaves your account.  15 If I send you money, Mr. Anderson, I would  16 put a value date of plus two days, which would be  17 from the day I sent it to the day you received it.  18 Could be a value date the same date, which would  19 mean it would be received the same date.  20 Q. Okay.  21 A. It's usually three days maximum.  22 Q. Okay. If you look at Exhibit 44, is any of  23 that information available?  24 A. It is a value date.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. And what about an execution date?</p> <p>2 A. I don't see an execution date here.</p> <p>3 Q. Okay. So --</p> <p>4 THE COURT: Hold on a second. What are you</p> <p>5 using to determine it's a value date?</p> <p>6 THE WITNESS: It says "Value date" right</p> <p>7 besides "Date activity, value date, debit credit."</p> <p>8 THE COURT: Oh, I see it. Thank you.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. So, what's your understanding of what</p> <p>11 "value date" means on this particular document?</p> <p>12 MR. NORK: Objection, lacks foundation.</p> <p>13 THE COURT: He's already testified to it.</p> <p>14 I'll overrule the objection.</p> <p>15 THE WITNESS: It would mean the date that</p> <p>16 funds were supposed to land in the account.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q. So, if this were an accurate document, that</p> <p>19 would be the date that the funds landed in</p> <p>20 Mr. Skarpelos' account?</p> <p>21 A. Correct.</p> <p>22 Q. Landed or left?</p> <p>23 A. Landed.</p> <p>24 Q. Okay. So, if we see debits on here going</p>	<p style="text-align: right;">Page 127</p> <p>1 down that third column and monies supposedly going</p> <p>2 out of the account, what would the value date mean</p> <p>3 in that context?</p> <p>4 A. It would mean that -- can you repeat your</p> <p>5 question?</p> <p>6 Q. I'm just trying to understand. You said</p> <p>7 the value date is the date that an amount lands in a</p> <p>8 person's account. But what happens if money is</p> <p>9 leaving a person's account? What does the value</p> <p>10 date mean?</p> <p>11 THE COURT: You'll need to lay foundation</p> <p>12 for that. I might have overruled the objection</p> <p>13 prematurely. That's almost like expert banking</p> <p>14 testimony beyond just personal knowledge.</p> <p>15 MR. ANDERSON: Your Honor, I think I might</p> <p>16 have misunderstood the testimony. I'll just move</p> <p>17 on.</p> <p>18 THE COURT: Okay.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. You were asked with respect to the last</p> <p>21 transaction that's on this document, other than the</p> <p>22 wire-out fee, the September 18th, 2013, transfer of</p> <p>23 7,500 euros.</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 128</p> <p>1 Q. Mr. Nork asked you if there was enough</p> <p>2 money to -- left to honor a 15,000 request, and I</p> <p>3 think you said mathematically no, right?</p> <p>4 A. Yes.</p> <p>5 Q. If Mr. Livadas testified earlier in this</p> <p>6 trial that Mr. Skarpelos was able to take his</p> <p>7 account into a negative cash position of \$153,000,</p> <p>8 would there be any reason why Weiser wouldn't honor</p> <p>9 that request?</p> <p>10 A. I'm confused with your question.</p> <p>11 Q. Mr. Livadas testified earlier this week</p> <p>12 that Mr. Skarpelos was able to run his account up to</p> <p>13 a large negative cash position.</p> <p>14 Do you understand that?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Can you think of any reason why</p> <p>17 Weiser wouldn't honor a 15,000 euro request when</p> <p>18 there's only 4,100 in the balance?</p> <p>19 A. No, I can't think of a reason.</p> <p>20 Q. I think while you were being asked</p> <p>21 questions about Exhibit 44 and Mr. Nork was up here</p> <p>22 writing the numbers on that chart, I thought I heard</p> <p>23 you say something to the effect of "weird" when</p> <p>24 looking at the statement.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall what were you thinking?</p> <p>3 A. I do.</p> <p>4 Q. And would you please tell us about it?</p> <p>5 A. There's no -- in the euro figures there's</p> <p>6 no dot dot. So, it says "15000" and just the</p> <p>7 numbers, that it's not a currency behind it. It's</p> <p>8 just standing out there.</p> <p>9 Q. Why is that unusual?</p> <p>10 A. Because in banks you always fill out the</p> <p>11 complete numerical value even though it's 00 at the</p> <p>12 end.</p> <p>13 Q. Oh, okay. I see. So, your understanding</p> <p>14 from being involved with accounts is that in an</p> <p>15 ordinary statement you'd see the complete dollar or</p> <p>16 euro and either cents or whatever the</p> <p>17 sub-denomination is in euros?</p> <p>18 A. Yes. It states this is the activity. It</p> <p>19 should have been -- if this value, the transfer USD</p> <p>20 to euro and the reference number -- should have been</p> <p>21 a reference. There should be no value from the</p> <p>22 conversion of USD to euros stated on the activity</p> <p>23 field, from my knowledge --</p> <p>24 Q. Okay.</p>

<p style="text-align: right;">Page 130</p> <p>1 A. -- of what I --</p> <p>2 THE COURT: And, Mr. Pedafronimos, based on</p> <p>3 your extensive traveling in Europe, what do they</p> <p>4 call the sub-denomination of a euro? We call it</p> <p>5 "cents" here.</p> <p>6 THE WITNESS: "Euro cents."</p> <p>7 THE COURT: Okay. Thank you.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. So, this statement doesn't show euro cents</p> <p>10 on the activity column.</p> <p>11 A. No, it does not.</p> <p>12 Q. Okay. And would you look at the top --</p> <p>13 actually, the top transaction under "Opening</p> <p>14 balance" there's a debit, the parenthetical, and a</p> <p>15 "balance" parenthetical. Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. Are those numbers the same?</p> <p>18 A. They are not.</p> <p>19 Q. Okay. It looks like the debit amount was</p> <p>20 rounded up for the balance. Do you see that?</p> <p>21 A. It does.</p> <p>22 Q. Is that another example of something</p> <p>23 unusual that you would --</p> <p>24 MR. NORK: Leading.</p>	<p style="text-align: right;">Page 131</p> <p>1 THE COURT: Sustained.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q. Is that a normal-type activity that you'd</p> <p>4 see in a bank statement?</p> <p>5 A. You would not see that.</p> <p>6 Q. When Mr. Nork was refreshing your</p> <p>7 recollection with those documents, I believe the</p> <p>8 question was asked, Is that money that went out of</p> <p>9 your account. Do you recall that?</p> <p>10 A. I do.</p> <p>11 Q. What did you understand him to mean by</p> <p>12 that?</p> <p>13 A. What Mr. Nork meant by money leaving my</p> <p>14 account?</p> <p>15 Q. Yes.</p> <p>16 A. Money leaving my account.</p> <p>17 Q. Okay. But you don't know based on</p> <p>18 refreshing your recollection where that went.</p> <p>19 A. Based on refreshing, it appears to be that</p> <p>20 those funds were sent to my father's account.</p> <p>21 Q. Okay. I think you testified yesterday that</p> <p>22 neither you nor your father ever gave any of that</p> <p>23 money to Mr. Skarpelos.</p> <p>24 A. Correct.</p>
<p style="text-align: right;">Page 132</p> <p>1 Q. You were asked some questions by Mr. Nork</p> <p>2 about when either Mr. Livadas or -- I think it was</p> <p>3 Mr. Livadas told you there was some red flags going</p> <p>4 up at the transfer agent.</p> <p>5 A. Correct.</p> <p>6 Q. And the deposition testimony that he cited</p> <p>7 to was on pages 66 and 67. Would you turn to those,</p> <p>8 please. The term "red flags" can mean any number of</p> <p>9 things.</p> <p>10 As I read your testimony that Mr. Nork read</p> <p>11 to you starting at line 66, line 15 and carrying</p> <p>12 onto page 67, line 6, did Mr. Livadas tell you at</p> <p>13 that time in October of 2013 that the stock</p> <p>14 certificate had been lost?</p> <p>15 A. He did not.</p> <p>16 Q. Okay. And you testified here, though, on</p> <p>17 page 67, line 4, "Was that the first time that you</p> <p>18 learned that the stock had been lost?"</p> <p>19 "Answer: Yes."</p> <p>20 A. Correct.</p> <p>21 Q. So, you understood at that time that the</p> <p>22 stock was lost.</p> <p>23 A. No. I understood at that time that there</p> <p>24 were red flags going up at the transfer agent.</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Okay.</p> <p>2 A. I didn't know they were lost during that</p> <p>3 time.</p> <p>4 Q. Okay. And thank you for clarifying that.</p> <p>5 So, did Mr. Livadas indicate to you what he meant by</p> <p>6 "red flags"?</p> <p>7 A. Not at that time. I told him, if there was</p> <p>8 an issue, contact Tom or contact NATCO and see</p> <p>9 what's going on. I wasn't aware.</p> <p>10 Q. Okay. I just want to make sure I</p> <p>11 understood what you just said.</p> <p>12 You said to Christos, if there's an issue,</p> <p>13 contact Tom?</p> <p>14 A. Yeah. Somebody corporate would know what's</p> <p>15 going on.</p> <p>16 Q. Does Mr. Skarpelos tell you about all of</p> <p>17 his business dealings?</p> <p>18 A. No, he does not.</p> <p>19 Q. As I understood your testimony yesterday,</p> <p>20 your role as it pertains to this lawsuit was</p> <p>21 basically to facilitate communication for Mr.</p> <p>22 Skarpelos and work with Christos to move a possible</p> <p>23 sale forward.</p> <p>24 A. Correct.</p>



<p style="text-align: right;">Page 134</p> <p>1 Q. Okay. And did you testify yesterday that,</p> <p>2 other than that, you didn't really have any other</p> <p>3 business dealings with Mr. Skarpelos?</p> <p>4 A. No. I testified that I didn't have any</p> <p>5 business dealings prior to that with Mr. Skarpelos.</p> <p>6 Q. And, Mr. Pedafronimos, have you ever</p> <p>7 testified in court before?</p> <p>8 A. I have not.</p> <p>9 Q. Okay. Certainly not in the United States.</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. Nowhere.</p> <p>13 Q. And these proceedings are new to you.</p> <p>14 A. They are.</p> <p>15 Q. Okay. You were shown Exhibit 40, if you'd</p> <p>16 turn to that, please. This is an April email</p> <p>17 exchange in October 20th of 2013, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And at that point in time I think</p> <p>20 you testified you went on vacation with Mr. Livadas</p> <p>21 that month.</p> <p>22 A. It was on vacation with Mr. Livadas August,</p> <p>23 September and mid -- I believe it was mid October.</p> <p>24 Q. Okay. And so this email exchange is right</p>	<p style="text-align: right;">Page 135</p> <p>1 after you get back?</p> <p>2 A. Correct.</p> <p>3 Q. Would you look at Exhibit 50, please.</p> <p>4 Now, Mr. Nork asked you some questions</p> <p>5 about your understanding that the deal was close to</p> <p>6 being finalized and whether you had couriered</p> <p>7 original documents to Mr. Boutsalis.</p> <p>8 Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. And I think Mr. Nork asked you a question</p> <p>11 that suggested that Mr. Livadas might not have been</p> <p>12 aware that you hadn't sent the originals to Mr.</p> <p>13 Boutsalis. Do you remember that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Did Mr. Livadas have the ability to</p> <p>16 contact Mr. Boutsalis himself?</p> <p>17 A. He did.</p> <p>18 Q. Okay. How did they know each other? Are</p> <p>19 they friends?</p> <p>20 A. They are.</p> <p>21 Q. Okay. And would you look at Exhibit 50,</p> <p>22 the second page. It looks like there's an email</p> <p>23 from Christos, "Weiser Capital at -- looks like</p> <p>24 "Xtos at Weiser Capital dot BZ." Do you see that?</p>
<p style="text-align: right;">Page 136</p> <p>1 A. I do.</p> <p>2 Q. Have you ever seen that domain name before?</p> <p>3 A. Which one?</p> <p>4 Q. "Weiser Capital dot BZ."</p> <p>5 A. Prior to discovery, no.</p> <p>6 Q. Okay. And looks like Nick Boutsalis' email</p> <p>7 is Primoris Group. Is that right?</p> <p>8 A. Yes.</p> <p>9 Q. So, to your knowledge was Mr. Bouts at</p> <p>10 Primoris in the 2013 time frame?</p> <p>11 A. It appears to be.</p> <p>12 Q. Okay. Well, this email is 2015. I'm</p> <p>13 wondering if you know if he was at Primoris in 2015.</p> <p>14 A. I don't. If he was with Primoris?</p> <p>15 Q. Yes.</p> <p>16 A. As an employee or a --</p> <p>17 Q. If he was employed by Primoris --</p> <p>18 A. Yes. Yes. I missed it. I should listen</p> <p>19 more carefully.</p> <p>20 Q. I'll ask you the question clearly.</p> <p>21 Was Mr. Boutsalis an employee of Primoris</p> <p>22 Group in 2013?</p> <p>23 A. Yes, I believe so.</p> <p>24 Q. Okay. Now, you were shown some exhibits --</p>	<p style="text-align: right;">Page 137</p> <p>1 and I won't show them to you -- but they were in</p> <p>2 relation to your deposition testimony that you</p> <p>3 believed the deal was close to being finalized.</p> <p>4 A. Correct.</p> <p>5 Q. Close to being finalized is not the same as</p> <p>6 finalized, correct?</p> <p>7 A. It is not.</p> <p>8 Q. Okay. And in the sale of restricted</p> <p>9 shares, are there other things that need to happen</p> <p>10 other than agreeing on a price and number of shares?</p> <p>11 A. There are.</p> <p>12 MR. NORK: Objection, lacks foundation,</p> <p>13 calls expert testimony.</p> <p>14 MR. ANDERSON: He testified yesterday, your</p> <p>15 Honor, that he has been involved in private shares</p> <p>16 of stock sales.</p> <p>17 THE COURT: What was the question again?</p> <p>18 Just rephrase the question.</p> <p>19 MR. ANDERSON: I'll try, your Honor.</p> <p>20 THE WITNESS: Can I repeat it?</p> <p>21 THE COURT: No thank you.</p> <p>22 MR. ANDERSON: Sorry, your Honor.</p> <p>23 BY MR. ANDERSON:</p> <p>24 Q. Are there documents other than -- well,</p>

<p style="text-align: right;">Page 138</p> <p>1 strike that. I'll strike the question and start 2 over.</p> <p>3 THE COURT: Okay.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. I think you testified yesterday that Tom 6 was willing to sell half of his position, 3.13 7 million shares for \$250,000.</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And that when you conveyed the 10 documents to Christos to show the buyer, those were 11 the terms that Mr. Skarpelos was willing to accept.</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And is that what you meant in terms 14 of the deal was close to being finalized?</p> <p>15 A. In my testimony?</p> <p>16 Q. I'm just asking for your understanding. 17 When you say "close to being finalized," what did 18 you mean?</p> <p>19 A. When I mean "close to being finalized," I 20 would assume there was a buyer ready to go with the 21 cash on hand, paperwork needs to be finished, the 22 whole process needs to move forward, attorneys need 23 to be contacted, representation letters need to be 24 filed, letter of opinion -- opinion letters need to</p>	<p style="text-align: right;">Page 139</p> <p>1 be created. It's a large process. It's not just an 2 individual purchasing from another individual.</p> <p>3 Q. And when that process is completed, the 4 deal is finalized.</p> <p>5 A. Correct.</p> <p>6 Q. You were asked questions about your 7 dealings with Vermont and whether you directed Mr. 8 Livadas to execute transactions.</p> <p>9 As I understood your testimony, you were 10 saying that you'd already given the instructions for 11 Vermont to execute a transaction and were asking 12 for Mr. Livadas' assistance if they weren't 13 happening promptly.</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And Mr. Nork asked you some 16 questions, and I just want to clarify about whether 17 there's a difference between the quadruple bypass 18 that you wrote and whether you understood Mr. 19 Skarpelos had a heart attack.</p> <p>20 I'd like you to look at page 79 and 80 that 21 he read to you earlier. I think he read to you from 22 page 79, line 14 and then on to page 80 at line 2. 23 It looks to me, if you look at the top of page 79, 24 that you were referred to Deposition Exhibit 47.</p>
<p style="text-align: right;">Page 140</p> <p>1 Is that right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And so Exhibit 47 is Trial Exhibit 4 59, I'll represent to you.</p> <p>5 THE COURT: Do you agree with that, Mr. 6 Nork?</p> <p>7 MR. NORK: Yes, your Honor.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q. On the last page -- second to last page of 10 that exhibit, do you see where Mr. Livadas says that 11 "Tom had a heart attack"?</p> <p>12 A. I do.</p> <p>13 Q. Do you believe that that's why you may have 14 mentioned that in your deposition?</p> <p>15 MR. NORK: Objection, leading.</p> <p>16 THE COURT: Sustained.</p> <p>17 MR. ANDERSON: I'll move on, your Honor.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q. Look at exhibit -- strike that. Mr. Nork 20 asked you some questions about Exhibit 8 and the 21 utility bill attached to that.</p> <p>22 A. Okay.</p> <p>23 Q. I think you testified that you recall, 24 perhaps, sending a utility bill or helping Mr.</p>	<p style="text-align: right;">Page 141</p> <p>1 Skarpelos transmit a utility bill at some point 2 after the account was -- account application was 3 submitted. Is that right?</p> <p>4 A. Yes.</p> <p>5 Q. After doing that, helping to transmit that 6 utility bill, did you ever hear anything else from 7 Weiser Asset Management regarding Mr. Skarpelos' 8 account?</p> <p>9 A. After the transmission of the utility bill?</p> <p>10 Q. Yes.</p> <p>11 A. I don't know -- I don't remember the date 12 of it off heart.</p> <p>13 Q. It seems like it's being suggested that you 14 were with Mr. Skarpelos in The Bahamas when he 15 submitted the application in May, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And at some point after did you help him 18 transmit a utility bill to W.A.M.?</p> <p>19 A. I might have, yes.</p> <p>20 Q. Okay. How long?</p> <p>21 A. A week.</p> <p>22 Q. Okay.</p> <p>23 A. Two weeks. I'm speculating.</p> <p>24 Q. It was sometime in the ensuing weeks or</p>

<p style="text-align: right;">Page 142</p> <p>1 months?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. After you helped Mr. Skarpelos</p> <p>4 transmit the utility bill, did you hear anything</p> <p>5 from W.A.M. about Mr. Skarpelos' account?</p> <p>6 A. No.</p> <p>7 Q. Have you ever seen anything regarding</p> <p>8 Mr. Skarpelos' account?</p> <p>9 A. No.</p> <p>10 MR. ANDERSON: I have nothing further, your</p> <p>11 Honor.</p> <p>12 THE COURT: Re-cross based on the redirect,</p> <p>13 Mr. Nork.</p> <p>14 MR. NORK: Thank you, your Honor.</p> <p>15 RE-CROSS-EXAMINATION</p> <p>16 BY MR. NORK:</p> <p>17 Q. You were asked questions about Exhibit 50,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. I think the point that was trying to be</p> <p>21 made is Mr. Livadas had the ability to communicate</p> <p>22 with Mr. Boutsalis, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. But the point is that you never told</p>	<p style="text-align: right;">Page 143</p> <p>1 Mr. Livadas that you did not send the original power</p> <p>2 of attorney and purchase and sale agreement to Mr.</p> <p>3 Boutsalis, correct?</p> <p>4 A. I never told anybody.</p> <p>5 Q. And you never told Mr. Livadas that you</p> <p>6 weren't going to send it, correct? You didn't tell</p> <p>7 him that you did or ever would.</p> <p>8 A. I didn't make that statement.</p> <p>9 Q. Okay. Did you ever tell Mr. Livadas that</p> <p>10 you were going to send the originals to Mr.</p> <p>11 Boutsalis?</p> <p>12 A. No.</p> <p>13 Q. Okay. So, again, Mr. Livadas, at least as</p> <p>14 far as you knew, had no idea that you were not going</p> <p>15 to send those documents to Mr. Boutsalis, correct?</p> <p>16 A. It wasn't discussed.</p> <p>17 Q. Okay. I want to be clear about your</p> <p>18 testimony regarding the red flags, because I</p> <p>19 understand under redirect your testimony is that you</p> <p>20 understood in October of 2013 that there was, quote,</p> <p>21 an issue regarding something, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, that's a little different than the way</p> <p>24 you testified in your deposition, isn't it?</p>
<p style="text-align: right;">Page 144</p> <p>1 A. Yes, it is.</p> <p>2 Q. Turn, please, to page 66. Page 66, line</p> <p>3 15, "Question: Okay. And I may have asked you this</p> <p>4 before. But did you ever become aware that Christos</p> <p>5 had learned that the stocks had been deemed lost?</p> <p>6 "Answer: In October 2013," correct?</p> <p>7 A. Correct.</p> <p>8 Q. This isn't that there was an issue but that</p> <p>9 the stocks had been deemed lost, correct?</p> <p>10 A. Yes, correct.</p> <p>11 Q. Then page 67, line 4, "Question: Was that</p> <p>12 the first time that you learned that the stocks had</p> <p>13 been deemed lost?</p> <p>14 "Answer: Yes," correct?</p> <p>15 A. Correct.</p> <p>16 Q. Not that there was an issue, but that the</p> <p>17 stocks had been lost, correct?</p> <p>18 A. In my testimony, yes, in my deposition.</p> <p>19 Q. Turn to Exhibit 44. You were asked</p> <p>20 questions about what you viewed as unusual entries</p> <p>21 on this exhibit, correct?</p> <p>22 A. Correct. Exhibit 44?</p> <p>23 Q. Second page, please. And you claim because</p> <p>24 there are no euro cents listed in one of the</p>	<p style="text-align: right;">Page 145</p> <p>1 columns, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Now, you'd agree with me, though, that in</p> <p>4 the debit column there are U.S. cents listed for</p> <p>5 every entry, correct?</p> <p>6 A. In the debit column?</p> <p>7 Q. Yes, sir.</p> <p>8 A. Okay.</p> <p>9 Q. Isn't it true that the activity column is</p> <p>10 just a description of the transaction?</p> <p>11 A. I can't make that statement.</p> <p>12 Q. Okay. If it is true that it's just a</p> <p>13 description of the transaction, it doesn't need to</p> <p>14 be carried out to euro cents at all, does it?</p> <p>15 A. I wouldn't know.</p> <p>16 Q. Okay.</p> <p>17 A. If it's just activity where you put a</p> <p>18 little summary of the transaction.</p> <p>19 Q. Correct. But in any event, we know that,</p> <p>20 when it gets to the debit column and the credit</p> <p>21 column, that the amount is carried out to the cents,</p> <p>22 correct?</p> <p>23 A. It still is carried out to the cents in the</p> <p>24 activity column when it's an addition.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. That wasn't my question.</p> <p>2 A. Oh, sorry.</p> <p>3 Q. My question was, In the debit and credit</p> <p>4 columns the entries are carried out to the cents,</p> <p>5 correct?</p> <p>6 A. They are.</p> <p>7 Q. Then, at the very beginning you were asked</p> <p>8 about the HSBC documents that you relied upon to</p> <p>9 refresh your recollection, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you were asked could Weiser have gotten</p> <p>12 these documents without your authorization, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And your answer was no, correct?</p> <p>15 A. Correct.</p> <p>16 Q. If those HSBC documents had been concerning</p> <p>17 a W.A.M. account, a Weiser account, it could have</p> <p>18 gotten those documents, couldn't it?</p> <p>19 A. Yes.</p> <p>20 Q. There wouldn't have been a problem.</p> <p>21 A. Correct.</p> <p>22 Q. So, if there was a banking relationship</p> <p>23 where W.A.M. had an account at Vermont and the</p> <p>24 money went through HSBC, Weiser would have no</p>	<p style="text-align: right;">Page 147</p> <p>1 trouble, wouldn't it? Wouldn't need your</p> <p>2 authorization at all, correct?</p> <p>3 A. Depends on what type of relationship it</p> <p>4 was.</p> <p>5 Q. If it was W.A.M.'s account --</p> <p>6 A. Right.</p> <p>7 Q. -- Weiser Asset Management account at</p> <p>8 Vermont, it wouldn't need your authorization</p> <p>9 because it wouldn't be your account.</p> <p>10 A. Correct.</p> <p>11 Q. And so there wouldn't be any question about</p> <p>12 how those documents were located because they were</p> <p>13 located by Weiser, correct, under my hypothetical?</p> <p>14 A. Hypothetical.</p> <p>15 Q. Yes.</p> <p>16 A. Rephrase the question and I'll answer you</p> <p>17 to the best of my ability.</p> <p>18 Q. My question is this: If the account was a</p> <p>19 Weiser Asset Management account --</p> <p>20 A. Correct.</p> <p>21 Q. -- it could obtain any records at all</p> <p>22 regarding transactions from the account that Weiser</p> <p>23 Asset Management had at Vermont that was eventually</p> <p>24 transferred through HSBC, couldn't it?</p>
<p style="text-align: right;">Page 148</p> <p>1 A. It could.</p> <p>2 MR. NORK: I have no further questions.</p> <p>3 Thank you.</p> <p>4 THE COURT: Thank you, Mr. Pedafronimos.</p> <p>5 You may step down.</p> <p>6 On behalf of the Weiser entities, do you</p> <p>7 have any additional witnesses to call or evidence to</p> <p>8 present, Mr. Nork?</p> <p>9 MR. NORK: I do not, your Honor.</p> <p>10 THE COURT: On behalf of Mr. Skarpelos, do</p> <p>11 you have any additional witnesses to call or</p> <p>12 evidence to produce, Mr. Anderson?</p> <p>13 MR. ANDERSON: No additional evidence or</p> <p>14 witnesses, your Honor.</p> <p>15 THE COURT: So, Mr. Skarpelos rests,</p> <p>16 correct?</p> <p>17 MR. ANDERSON: Yes.</p> <p>18 THE COURT: And the Weiser entities rest as</p> <p>19 well, correct?</p> <p>20 MR. NORK: Yes, your Honor.</p> <p>21 THE COURT: Gentlemen, it is quarter of</p> <p>22 twelve. Mr. Pedafronimos, you may sit down. The</p> <p>23 attorneys are just standing up because they're</p> <p>24 talking to me, so it's just a sign of respect, which</p>	<p style="text-align: right;">Page 149</p> <p>1 I appreciate.</p> <p>2 Gentlemen, this is one of those times where</p> <p>3 I point out attorneys are very bad at estimating</p> <p>4 time. We thought we were going to get through both</p> <p>5 the cross and the redirect and re-cross of</p> <p>6 Mr. Pedafronimos in the early morning section of</p> <p>7 today's trial and then go forward from there.</p> <p>8 So, now I'm adjusting our schedule on the</p> <p>9 fly, as they say. What I would propose that we do</p> <p>10 is this: As I said, it's about quarter of twelve,</p> <p>11 give or take. I would suggest that we return at</p> <p>12 1:30. At 1:30 we will take up Mr. Anderson's Rule</p> <p>13 52 motion. The parties can argue that motion. I'll</p> <p>14 consider it, probably go off the bench briefly, take</p> <p>15 a look at the rule one more time in a couple of</p> <p>16 cases that I'm familiar with regarding Rule 52 and</p> <p>17 come back and give you a ruling on the 52 motion.</p> <p>18 I think it would be now prudent to come</p> <p>19 back and do closing arguments tomorrow. Because of</p> <p>20 how I structured what the closing arguments would</p> <p>21 look like, I don't want to come back from the bench</p> <p>22 or from the ruling on a Rule 52 motion and say,</p> <p>23 Here's the ruling, and you guys still don't know who</p> <p>24 will argue what at what time. I think that's unfair</p>

<p style="text-align: right;">Page 150</p> <p>1 to both parties.</p> <p>2 We'll come back at 1:30, we'll consider the</p> <p>3 Rule 52 motion. I'll think about it and go back</p> <p>4 into chambers and collect my thoughts. I'll come</p> <p>5 back out this afternoon and tell you what the ruling</p> <p>6 is on that motion. We'll break for the day and come</p> <p>7 back and do closing arguments tomorrow.</p> <p>8 As I discussed how we will structure the</p> <p>9 closing arguments, whether the contract causes of</p> <p>10 action remain or whether do not, do you have any</p> <p>11 objection to that, Mr. Anderson?</p> <p>12 MR. ANDERSON: No objection, your Honor.</p> <p>13 THE COURT: If you do, please tell me.</p> <p>14 MR. ANDERSON: No.</p> <p>15 THE COURT: I'm just trying to think how to</p> <p>16 most efficiently use our time. I want to give you</p> <p>17 the chance to collect your thoughts. When I ask</p> <p>18 people, What are your thoughts, I really want to</p> <p>19 know what your thoughts are.</p> <p>20 MR. ANDERSON: My pause was nothing more</p> <p>21 than a function of being a little bit tired.</p> <p>22 THE COURT: I can appreciate that as well.</p> <p>23 Mr. Nork, what do you think?</p> <p>24 MR. NORK: Well, it raises the question in</p>	<p style="text-align: right;">Page 151</p> <p>1 my mind -- I totally agree with the timing, with</p> <p>2 closings tomorrow, which is Friday morning."</p> <p>3 THE COURT: So, everybody knows, I've got a</p> <p>4 judges' meeting at noon.</p> <p>5 MR. NORK: Which leads me to -- I know the</p> <p>6 Court mentioned at pretrial, I think, that there was</p> <p>7 a potential of closings and then taking a break for</p> <p>8 the day and then coming back and hearing a decision.</p> <p>9 I don't see that happening, your Honor.</p> <p>10 THE COURT: Well, I think what I'll be able</p> <p>11 to do, Mr. Nork, under the schedule that I have now</p> <p>12 established once the evidence is finally in, is it</p> <p>13 will give me the opportunity tonight and also</p> <p>14 probably this afternoon to go over my notes, to</p> <p>15 consider those things. And then we'll be able to</p> <p>16 come back and do closings so I won't have to have a</p> <p>17 big pause, which is what I anticipated doing by</p> <p>18 saying we would come back the next day.</p> <p>19 So, I think I'll be able to consider your</p> <p>20 closings arguments and then come back and give you a</p> <p>21 ruling tomorrow. It might be in the afternoon, but</p> <p>22 it will be tomorrow.</p> <p>23 MR. NORK: And here's where I was going</p> <p>24 with that, your Honor. I don't want to hold your</p>
<p style="text-align: right;">Page 152</p> <p>1 Honor under any schedule. If you want to take as</p> <p>2 long as you want to make a decision, that's fine.</p> <p>3 My point is this: My client has a flight</p> <p>4 out of the country Friday afternoon. I suspect Mr.</p> <p>5 Anderson's clients have some similar arrangement.</p> <p>6 And on the possibility that this court is</p> <p>7 prepared to issue an order late in the day on</p> <p>8 Friday, I just want to -- I would like to mention</p> <p>9 that I don't think my client might not be available.</p> <p>10 THE COURT: Well, I don't believe --</p> <p>11 MR. NORK: I don't want it to mean any</p> <p>12 disrespect to your Honor.</p> <p>13 THE COURT: I would not take any offense</p> <p>14 if any of the three witnesses who are present in the</p> <p>15 courtroom today, the two parties, the three</p> <p>16 witnesses total, are not here when I announce the</p> <p>17 ruling. I would not infer anything negative about</p> <p>18 it. I know they've traveled from a long distance to</p> <p>19 be here, so if they're not here, they're simply not</p> <p>20 here. It's up to them if they want to be here.</p> <p>21 But if they're not here, gentlemen, it</p> <p>22 doesn't affect the outcome of your case, because</p> <p>23 I've heard all the testimony that I will hear and so</p> <p>24 your physical presence -- I'm looking at all three</p>	<p style="text-align: right;">Page 153</p> <p>1 of you -- your physical presence means nothing other</p> <p>2 than you're the parties. If not, you can read about</p> <p>3 it in the prepared order or talk to your attorneys</p> <p>4 about it once you land in your respective</p> <p>5 international destinations.</p> <p>6 MR. NORK: Thank you, your Honor.</p> <p>7 THE COURT: That goes for Mr. Skarpelos as</p> <p>8 well, Mr. Anderson. If he's got a flight out to be</p> <p>9 somewhere else, go back to Athens or Bahamas or Hong</p> <p>10 Kong, or whatever, he's free to do so.</p> <p>11 I know tonight I've got a social</p> <p>12 engagement, the local bar association has its dinner</p> <p>13 at the Basque Hotel, so I'll be there for that.</p> <p>14 That's as close as I get today to international</p> <p>15 travel, is I'm going to a Basque restaurant for</p> <p>16 dinner.</p> <p>17 MR. ANDERSON: Your Honor, my firm has a</p> <p>18 table and Mr. Adams and I are planning to go</p> <p>19 briefly, because you have to fill those seats when</p> <p>20 other people don't want to go. I promise I will not</p> <p>21 speak to you and don't take it that I'm ignoring</p> <p>22 you, as you said yesterday.</p> <p>23 THE COURT: Full disclosure. I know Mr.</p> <p>24 Adams, I know Mr. Anderson, I know Mr. Nork. If I</p>

<p style="text-align: right;">Page 154</p> <p>1 see any of you there, I will speak to you in a civil  2 manner and we won't talk about the case. I never  3 think it means that I can't talk to you if you've  4 got a case pending.  5 We ethically are restrained from talking  6 about the case but there's a local bar event. I  7 don't know, Mr. Nork. I'm assuming Holland &amp; Hart  8 has a table just like everybody else.  9 MR. NORK: May very well, your Honor.  10 THE COURT: Judging by your response, you  11 have no intention of being there.  12 MR. NORK: No intention whatsoever.  13 THE COURT: But if you're there and I see  14 you, I will say hello and talk to you in a social  15 way. We won't talk about the case. So, we won't  16 discuss the case. Mr. La Forge, are you going?  17 MR. LA FORGE: I'm not going, but I would  18 love to talk about hearsay with you at some point.  19 THE COURT: Hearsay is an interesting  20 issue. I would be happy to discuss it with you as  21 it doesn't relate to this case.  22 Let's reconvene at 1:30 and take up the  23 Rule 52 motion at that point and we'll go forward  24 with the schedule we've established. We will</p>	<p style="text-align: right;">Page 155</p> <p>1 anticipate convening tomorrow one way or the other  2 at 8:30 a.m. for closing arguments and go from  3 there.  4 Anything else on behalf of the Weiser  5 entities, Mr. Nork?  6 MR. NORK: No, your Honor. Thank you very  7 much.  8 THE COURT: Mr. Anderson, anything on  9 behalf of Mr. Skarpelos?  10 MR. ANDERSON: No, your Honor.  11 THE COURT: Thank you, gentlemen.  12 See you at 1:30.  13 (Recess taken.)  14 -o0o-  15  16  17  18  19  20  21  22  23  24</p>
<p style="text-align: right;">Page 156</p> <p>1 AFTERNOON SESSION  2 THE COURT: Please be seated.  3 Skarpelos vs. Weiser. The Weiser entities  4 are present as well as Mr. Skarpelos and his  5 counsel.  6 When we broke for lunch, I informed the  7 parties when we came back we would address the  8 argument that Mr. Anderson wants to make regarding  9 Nevada Rule of Civil Procedure 52(c). The court  10 notes that effective December 31st, 2018, NRCP 52  11 was amended by the Nevada Supreme Court in ADKT  12 0052. I'm not sure if you're aware of that, Mr.  13 Anderson. I assume that you are.  14 It doesn't substantively change the issues.  15 The amendments just -- they provide additional  16 information under Subsection A. The court is  17 applying the amendment effective December 31st,  18 2018, to that rule of civil procedure.  19 MR. ANDERSON: Thank you, your Honor. I  20 was not aware of that but 52(c) has not changed and  21 that's the rule under which Mr. Skarpelos is moving.  22 THE COURT: Hold on a second. The ADKT and  23 the amendments are extensive. They are amendments  24 to the Nevada Rules of Civil Procedure, the Nevada</p>	<p style="text-align: right;">Page 157</p> <p>1 Rules of Appellate Procedure and the Nevada  2 Electronic Filing and Conversion rules. But what I  3 will do --  4 MR. NORK: Did they go into effect in  5 March?  6 THE COURT: No. The effective date filed  7 December 31st, 2018. The effective date was amended  8 and filed December 31st. It says the effective  9 date is March 1st, 2019. Thank for clarification.  10 MR. NORK: That's comforting to know, your  11 Honor.  12 THE COURT: I was momentarily incorrect.  13 As I said, the changes regarding 52 really are  14 inconsequential to the motion Mr. Anderson wants to  15 make anyway.  16 So, under the old Rule 52, go ahead.  17 MR. ANDERSON: Thank you, your Honor. At  18 this time Mr. Skarpelos moves for judgment on  19 partial findings against Weiser Asset Management  20 Limited and Weiser Bahamas Limited aka Weiser  21 Capital pursuant to NRCP 52(c).  22 That rule provides, "If during a trial  23 without a juror a party has been fully heard on an  24 issue and the court finds against the party on that</p>

<p style="text-align: right;">Page 158</p> <p>1 issue, the court may enter judgment as a matter of  2 law against that party with respect to a claim or  3 defense that cannot under the controlling law be  4 maintained or defeated without a favorable finding  5 on that issue."</p> <p>6 And the next part's irrelevant because  7 we've already heard from all the witnesses and the  8 evidence is now closed. And then the rule goes on  9 to say, "Such a judgment shall be supported by  10 findings and conclusions of law as required by  11 Subdivision A of this rule."</p> <p>12 So, the starting point for this analysis is  13 the cross-claim asserted by Weiser. Weiser's answer  14 and cross-claim was filed on May 24th, 2016. That's  15 the operative pleading at issue in this case. If  16 you turn to paragraph three on page ten of that  17 document, that paragraph reads, "In July 2013 Weiser  18 and Skarpelos entered into a contract for the sale  19 of a certain amount of stock. Skarpelos, the former  20 owner of the stock, agreed to sell it to Weiser."  21 And, again, if you look at the first page of this  22 document, Weiser is collectively Weiser Asset  23 Management and Weiser Bahamas.</p> <p>24 Paragraph 4 alleges that Weiser performed</p>	<p style="text-align: right;">Page 159</p> <p>1 under that contract, the July 2013 contract. And  2 paragraph 5 essentially alleges that Mr. Skarpelos  3 later took actions to negate the transfer called for  4 by the July 13th contract.</p> <p>5 The cross-claim goes on, and your Honor  6 made some comments the other day about there's three  7 different claims for relief. There's the  8 declaratory relief claim in which Weiser is claiming  9 ownership of the stock. There's a breach of  10 contract claim and a breach of implied covenant of  11 good faith and fair dealing claim.</p> <p>12 If you look at the first claim for relief,  13 "Declaratory judgment," paragraph 9 reincorporates  14 all the allegations of the paragraphs above, which  15 include the allegation of a July 2013 contract.  16 Page 10, that alleges that Weiser and Skarpelos have  17 each asserted competing and conflicting claims over  18 the entitlement to the stock at issue in their  19 July 2013 contract. And pursuant to that, in  20 paragraph 11 Weiser, not identifying which one,  21 claims to be the rightful owner of the stock.</p> <p>22 The breach of contract action next also  23 incorporates all the allegations and paragraph 13  24 again alleges a binding July 2013 contract for the</p>
<p style="text-align: right;">Page 160</p> <p>1 sale of stock. It alleges the same sort of breach  2 by Mr. Skarpelos. The third claim for relief also  3 incorporates all allegations above and refers to in  4 paragraph 18 the aforementioned contract, which I  5 assume refers to the July 2013 contract because  6 there are no other contracts identified in this  7 document.</p> <p>8 Now, I've discussed already that they  9 referred to themselves collectively as Weiser. We  10 refer to Weiser Bahamas as "Weiser Capital" in this  11 case because that's what Mr. Livadas indicated his  12 preference was. Indeed, that's set forth in his  13 declaration and other documents. So, Weiser Bahamas  14 has been called "Weiser Capital," but they're the  15 same entity.</p> <p>16 And, obviously, the collective reference  17 is, perhaps, used in pleadings but they're,  18 obviously, two different entities. And I don't  19 think it's legally possible for them to both claim  20 by way of the same contract that they're the owner  21 of the stock. What's not been obvious over the last  22 three years of litigation and even at this trial is  23 which of these entities actually claims to be the  24 owner of the stock. I'd like to run the Court</p>	<p style="text-align: right;">Page 161</p> <p>1 briefly through the history of the allegations just  2 so we can make that clear.</p> <p>3 On October 30th, 2015, Weiser Asset  4 Management claiming by, virtue of the July 2013  5 contract, writes a demand letter to NATCO saying, We  6 are the owner of the stock, and Mr. Walker testified  7 that as a result of that demand and some concerns he  8 had in the interim, they filed this interpleader  9 action against Mr. Skarpelos and against Weiser  10 Asset Management.</p> <p>11 In February of 2016 Mr. Walker testified at  12 that time that counsel -- Weiser Asset Management's  13 counsel, Mr. Nork, notified Mr. Walker that there  14 might be a different claim and he provided  15 exhibit -- I think it's 30 and 35 -- to Mr. Walker  16 setting forth that Weiser Capital is the proper  17 party to this action. So, NATCO goes ahead and  18 amends the complaint, they serve Weiser Capital, and  19 now we have both Weiser Asset Management and Weiser  20 Capital in the lawsuit.</p> <p>21 They file their answer and cross-claim  22 that's referring to themselves collectively, as I  23 referred to, and they're not identified by way of  24 their pleading which one really claims to be the</p>

<p style="text-align: right;">Page 162</p> <p>1 owner. I guess they were trying to keep their 2 options open at that point. 3 In April of 2018 Mr. Livadas submitted a 4 declaration to this court under oath as part of 5 Weiser's opposition to the motion for summary 6 judgment and he stated under oath that Mr. Skarpelos 7 sold the shares to Weiser Capital in April of 2013 8 and somehow was credited \$250,000 roughly to his 9 W.A.M. account. 10 Six months later at his deposition in 11 October of 2018, Mr. Livadas testified that Mr. 12 Skarpelos sold stock to a third-party buyer in April 13 of 2013 through Weiser Capital, not W.A.M, that 14 Mr. Skarpelos sold through a third-party buyer 15 through Weiser Capital as an intermediary. He also 16 testified at his deposition that what is now Trial 17 Exhibit 30, the completed purchase and sale 18 agreement of July 2013, was intended to document the 19 April 2nd supposed transaction that had occurred, I 20 think, three months earlier. 21 So, after that deposition, we've been 22 operating under the assumption that that was Mr. 23 Livadas' version of the truth and that's what would 24 be argued at trial, and that's what I based,</p>	<p style="text-align: right;">Page 163</p> <p>1 essentially, my entire trial statement on. 2 Well, we get to court on January 28th, 3 2019, and Mr. Livadas starts to testify. And one of 4 the things that he said -- I believe it was on 5 Monday -- is that Mr. Skarpelos actually sold the 6 stock to Weiser Asset Management as an intermediary 7 on April 2nd, 2013 -- not Weiser Capital, Weiser 8 Asset Management -- and then W.A.M. conveyed that 9 stock to an unidentified third-party buyer. 10 He also testified for the first time that 11 the July 2013 contract was for a future track that 12 hadn't happened. It was unrelated to the April 2nd 13 transaction. And I think he testified it was 14 regarding a deal that never happened and it was 15 effectively a meaningless document, but for 16 anti-money-laundering purposes he signed the form to 17 complete the file, I think was his testimony. 18 And I think upon your Honor's questioning 19 admitted he submitted it for a purpose that was 20 other than its intended purpose. I'm not sure how 21 the anti-money-laundering regulators feel about that 22 but that's not relevant to this motion. 23 What they are alleging is that when Mr. 24 Skarpelos didn't deliver the shares, Mr. Livadas</p>
<p style="text-align: right;">Page 164</p> <p>1 claims that W.A.M. had to do something else to 2 rectify the situation for the buyers, either by 3 buying different shares in the marketplace or 4 shorting transactions to somehow make the 5 disappointed or frustrated buyer whole. 6 What it sounds like to me, according to the 7 latest story that we're hearing, is that Weiser 8 Asset Management is claiming Skarpelos breached an 9 alleged account agreement on an April 2nd 10 transaction and wants damages for what it had to do 11 to make it right with the third-party buyer. 12 It's obvious, according to Mr. Livadas' 13 testimony, that the April 2nd transaction he 14 described, W.A.M. was not intended to be the owner 15 in that transaction and so their claim now -- which 16 I'll get to in a second -- that they should be the 17 owner based on that alleged account breach 18 transaction doesn't get them ownership of the stock. 19 They might have a damages claim they could have 20 pursued if they timely asserted it, and there was an 21 actual transaction, but they didn't do that. 22 They alleged throughout the cross-claim I 23 just went through that what they're relying on in 24 this case is a July 2013 transaction. No April 2013</p>	<p style="text-align: right;">Page 165</p> <p>1 transaction was ever set forth in the pleading. I 2 know Mr. Nork -- I objected to your Honor on Monday 3 or Tuesday morning about them asserting this claim 4 now because it wasn't plead. I know Mr. Nork 5 pointed out Mr. Livadas' declaration claimed this 6 earlier, but that was Weiser Capital claiming 7 ownership in his declaration. When I depose him he 8 said the July agreement that they're relying on 9 referred back to the April 2nd transaction. 10 So, based on Mr. Livadas' testimony on 11 Monday, if the Court accepts that he's relying on an 12 April 2nd transaction and that the July 2013 13 contract they've been relying on for three or more 14 years is meaningless, then this case is over. 15 They're arguing something they didn't plead. I 16 objected to it. It was not tried with 17 Mr. Skarpelos' express or implied consent and this 18 case is over and Mr. Skarpelos is the owner of the 19 stock. 20 All of their claims in this case, your 21 Honor -- not just the contract claims -- depend 22 completely on a July 2013 contract that they, 23 according to Mr. Livadas on Monday, are now 24 abandoning. So, I'm left here as counsel with</p>



<p style="text-align: right;">Page 166</p> <p>1 trying to shoot a moving target, but that's not what  2 litigation is supposed to be about. In litigation  3 we do pleadings to give fair notice to the other  4 parties about what the nature and basis of your  5 claims are and the operative pleading says July 2013  6 contract. That's what I prepared for trial for.  7 That's what I deposed Mr. Livadas based on.  8       You can't send letters to NATCO -- and I'm  9 not saying you, your Honor -- but Weiser can't send  10 letters to NATCO, you know, presenting stock  11 certificates, presenting powers of attorney saying  12 that Weiser Asset Management is the owner, demanding  13 that they change their stock register. They can't  14 do that, cause NATCO to file a complaint based on  15 that agreement -- alleged agreement and go three  16 years of litigation only to change their story at  17 the last minute.  18       So, before I started preparing for this  19 trial, I outlined what I thought part of my closing  20 argument might look like. And it's changed a little  21 bit based on what I've heard, which, in actuality,  22 does. But if you look at Exhibit 30, the July 2013  23 sale agreement, and prior to Mr. Livadas disavowing  24 that contract on the first day of trial, his</p>	<p style="text-align: right;">Page 167</p> <p>1 position at the deposition was that the July 2013  2 agreement was intended to document the April 2nd,  3 2013 transaction. Again, if the Court accepts that,  4 the case is over.  5       But if they're going to switch back to,  6 again, that story that Mr. Livadas told me at his  7 deposition, then their case goes away as well. It  8 fails because there's no evidence that Mr. Skarpelos  9 ever intended to sell the stock to Weiser Capital.  10 He never made an offer to sell his stock to Weiser  11 Capital. There's no evidence of that. No evidence  12 that Weiser Capital ever notified Mr. Skarpelos of  13 any purported acceptance of the offer. There was  14 absolutely no meeting of the minds between Mr.  15 Skarpelos, who was willing to sell his stock, half  16 his position, 3.3 million for \$250,000, to a  17 strategic investor, someone who might help the  18 company. I don't think that testimony is really in  19 dispute.  20       And there's no meeting of the minds between  21 him and Weiser Capital on what the terms of the  22 contract would be. Mr. Skarpelos didn't even see a  23 completed copy of that document until after this  24 litigation commenced and there's no evidence that</p>
<p style="text-align: right;">Page 168</p> <p>1 Weiser Capital or anyone else ever sent him that  2 document. In fact, I think Mr. Livadas testified  3 that he filled this document out much, much later  4 than the date that was written in on it, which is  5 July 5th, 2013.  6       In fact, I think I'll get into a little  7 more detail tomorrow. I think the evidence actually  8 shows it was completed after W.A.M. had already told  9 NATCO that it was the owner. Skarpelos has never  10 heard of Weiser Capital until after this lawsuit. I  11 think the evidence shows that Mr. Livadas or -- he  12 is Weiser Capital, I think he admitted, that he  13 induced Mr. Skarpelos to sign these documents on the  14 idea that there'd be a strategic investor involved  15 and then went ahead and assigned the rights to the  16 stock to himself without notifying Mr. Skarpelos.  17       So, your Honor, even if we get past the  18 abandonment of the July 30th theory, which I  19 talked about earlier, even if we get past that and  20 we're back to the July 30th agreement, there's no  21 enforceable contract between Mr. Skarpelos and  22 Weiser Capital. There's just no credible evidence  23 of that. However, even if we get to the step where  24 the July 5th, 2013, contract was found to have</p>	<p style="text-align: right;">Page 169</p> <p>1 been formed by the Court and is a valid, enforceable  2 contract, that agreement provides -- if you look at  3 Section 1.1 of that agreement it provides, "On and  4 subject to the terms of this agreement, effective as  5 of the closing date, Buyer shall purchase from  6 Seller and Seller shall sell to Buyer 3.3 million  7 shares."  8       So, the express language of the contract  9 says that it's, No. 1, subject to the terms set  10 forth in this agreement and, No. 2, will be  11 effective as of the closing date of  12 September 30th, 2013, which Mr. Livadas wrote in  13 himself without ever mentioning an April 2nd  14 transaction. The language provides that there's a  15 closing date of September 30th or such other date  16 as the parties may agree.  17       First of all, there's no evidence that Mr.  18 Skarpelos agreed that this agreement would be in  19 place in the first place. But, second, I think Mr.  20 Livadas testified they never discussed an  21 alternative closing date. So, if this document is  22 an enforceable contract, that's the term that  23 governs. It also calls for a cash payment of  24 \$250,000 due on September 30th, 2013. There's no</p>

<p style="text-align: right;">Page 170</p> <p>1 evidence that any date, including the April 2nd,  2 2013, date, was agreed upon.  3 I'd like to direct the Court's attention to  4 the last page of Exhibit 30, Section 4.1. It's  5 entitled "Entire Agreement. This agreement  6 constitutes the entire understanding and agreement  7 of the parties relating to the subject matter hereof  8 and supersedes any and all prior understandings,  9 agreements, negotiations and discussions both  10 written and oral between the parties hereto with  11 respect to the subject matter hereof."  12 That's commonly referred to as an  13 integration clause. Again, no mention of an April  14 2nd transaction or W.A.M.'s purported payment,  15 credit to Mr. Skarpelos' account. No evidence of  16 Weiser Capital or anyone on their behalf ever paid  17 Skarpelos or that Weiser Capital paid W.A.M. And  18 Mr. Livadas signed it saying "This agreement has  19 been signed by the parties as of the date first  20 above written, July 5th, 2013," which is not true,  21 according to him.  22 So, I'm not sure which of the many theories  23 that Weiser's advanced in this case that the Court  24 are to accept. I would argue none of them are</p>	<p style="text-align: right;">Page 171</p> <p>1 really credible. But they don't have any legal  2 basis for their claims in this case. The pleadings  3 relied on the July 13 contract and that's not been  4 proven and it's abandoned by them. So, what happens  5 if they don't have any valid claims? It's the  6 status quo. Mr. Skarpelos was issued the stock in  7 2009. He's never been divested of ownership.  8 Weiser admits in this document and elsewhere that he  9 was the former owner of the stock, and they have not  10 established any evidence or provided any evidence  11 that a July 2013 contract was entered into and  12 performed. They've abandoned it.  13 They have no legal basis to assert their  14 claims. They can't sustain a claim without a  15 favorable finding of the Court that there was a  16 valid July 2013 contract that was performed.  17 There's no evidence of that, your Honor, and Mr.  18 Skarpelos believes he is entitled to judgment as a  19 matter of law on partial findings on all of Weiser  20 claim -- all of Weiser's claims against him as a  21 cross-claimant.  22 THE COURT: Thank you, Mr. Anderson.  23 Mr. Nork, what are your thoughts.  24 MR. NORK: Thank you, your Honor.</p>
<p style="text-align: right;">Page 172</p> <p>1 I agree with Mr. Anderson's description of  2 the provisions of NRCP 52(c). And as is typical in  3 the State of Nevada, there isn't a lot of case law  4 interpreting 52(c) but I think there are two that  5 are helpful, first one being the Certified Fire  6 Protection vs. Precision Construction. It's a 2012  7 Nevada case 283 P 2d. at 250.  8 THE COURT: I've got it right here.  9 MR. NORK: I knew you would, your Honor.  10 And that provides a helpful summary of the  11 standards that the Court must apply in weighing a  12 Rule 52(C) motion. Additionally, there's an  13 unpublished case Charlie Brown Construction vs.  14 Hansen Aggregates. It is a 2013 case.  15 THE COURT: Then I will not consider it.  16 As an aside, Mr. Nork, as we all know, the Nevada  17 Supreme Court modified -- or the Nevada Supreme  18 Court issued ADKT 0504 in November of 2015. And in  19 that order it -- the Nevada Supreme Court -- did  20 away with Supreme Court Rule 123, which prohibits  21 the citation to unpublished dispositions and it also  22 amended the Nevada Rules of Appellate Procedure  23 which apply only to the Nevada Court of Appeals and  24 the Nevada Supreme Court.</p>	<p style="text-align: right;">Page 173</p> <p>1 And in amending Rule 36 of the Nevada Rules  2 of Appellate Procedure it says that parties are now  3 allowed to cite to unpublished dispositions of the  4 Nevada Supreme Court that are issued after January 1  5 of 2016. Now, that rule has recently been amended,  6 again, I think in the fall or winter of last year  7 and it also with the new amendment says that you're  8 not allowed to cite to unpublished dispositions of  9 the Nevada Court of Appeals at all.  10 The difficulty, I think, that's occurred  11 with ADKT 0504 is in eliminating Rule 123, which  12 prohibits the citation of unpublished decisions in  13 toto, and amending Nevada Rule of Appellate  14 Procedure 36, the Supreme Court really didn't give  15 us any indication of what to do with their  16 unpublished dispositions at the trial level or at  17 the pleading stage. But my analysis is this: The  18 Nevada Supreme Court, I think, in enacting the ADKT  19 in November of 2015, realized that all of their  20 previous unpublished dispositions were written not  21 to be cited by the parties.  22 And they also are acknowledging by  23 prospectively allowing the citation to their  24 unpublished dispositions as of January 1, 2016, that</p>

<p style="text-align: right;">Page 174</p> <p>1 they're probably gonna write things maybe a little  2 bit differently going forward. I acknowledge that  3 there is no rule directly in place that says counsel  4 cannot cite district courts now to unpublished  5 dispositions of the Nevada Supreme Court. However,  6 I think it's reasonable to conclude -- and I always  7 have concluded since November of 2015 -- that if you  8 can't cite the Nevada Supreme Court or the Nevada  9 Court of Appeals to an unpublished disposition  10 issued prior to January 1, 2016, pursuant to Nevada  11 Rule of Appellate Procedure 36, there's no reason  12 that the supreme court would contemplate that you  13 should be able to do it to trial courts or to  14 districts courts.</p> <p>15 And so I don't allow people to cite to  16 those unpublished dispositions. When I say "I don't  17 allow it," it sounds a little bit more authoritative  18 than it is. I just don't consider them. I think  19 that if you're going to cite me to an unpublished  20 disposition issued prior to January 1, 2016, I'll  21 tell you right now I won't read it or consider it  22 and it won't be part of my analysis. I do have a  23 Certified Fire Protection Incorporated, but I think,  24 as you said, that is illuminating.</p>	<p style="text-align: right;">Page 175</p> <p>1 MR. NORK: Yes. My purpose, your Honor, in  2 referencing the unpublished decision is that it  3 actually does cite two published decisions, which I  4 think are helpful.</p> <p>5 THE COURT: Okay. Give me the published  6 decisions.</p> <p>7 MR. NORK: I will, your Honor.</p> <p>8 There are two, your Honor. One is D.R.  9 Horton vs. Eighth Judicial District. The citation  10 is 123 Nevada 468, spot cite to page 481. And then  11 168 Pacific 3d. 731, spot cite to 741. It's a 2007  12 case.</p> <p>13 The other case, your Honor, is Mosley vs.  14 Eighth Judicial District Court, 124 Nevada 654, 188  15 Pacific 3d., 1136. It's a 2008 case. And what  16 those two cases refer to is kind of the procedural  17 advantage that can be served by a Rule 52(C) motion,  18 and that's my point in referencing these cases.</p> <p>19 Both of those cases say that a 52(c) motion  20 allows the Court to exercise judicial economy by  21 saving time. Indeed, the Mosley case says, "Allows  22 the court to conserve time and resources by making  23 it unnecessary for the court to hear evidence on  24 additional facts when the result would not be</p>
<p style="text-align: right;">Page 176</p> <p>1 different even if those additional facts were  2 established." My point in saying that, your Honor,  3 is that in less than 24 hours we're having closing  4 arguments in this case. The line of inquiry on a  5 52(c) motion versus the Court's discretion in ruling  6 on the entirety of the case is a little different.  7 The focus under a Rule 52(C) motion is whether a  8 claim or defense cannot under the controlling law be  9 maintained or defeated without a favorable finding  10 on that issue.</p> <p>11 And so I opened with just observing the  12 fact that in a typical case the plaintiff would  13 present all of its evidence and then a 52(c) motion  14 would be made and it saves all the time in having to  15 present the rest of the case. That's not the  16 advantage here. We're done with all of the evidence  17 and the parties jointly presented their evidence in  18 the case. So, the 52(c) motion just from a  19 big-picture perspective is procedurally unnecessary  20 given that closing arguments will be tomorrow  21 morning, and it may needlessly create an issue on  22 appeal, which would be ideally avoided.</p> <p>23 THE COURT: Let me just ask you a  24 clarifying question. You're right. Generally</p>	<p style="text-align: right;">Page 177</p> <p>1 speaking, a Rule 52(C) motion is made at the  2 conclusion of the case in chief by the plaintiff.  3 This case is unique in that it's basically -- I'm  4 not minimizing contract claims but it's basically an  5 interpleader action. That's how it began by Nevada  6 Agency and Transfer Company, interpleading and now  7 we've got the competing interests of Mr. Skarpelos  8 and Mr. Livadas' entities, and so the parties kind  9 of agreed to the presentation of evidence in a  10 specific way.</p> <p>11 I would observe that it would have been  12 difficult to rule on the motion at all until I heard  13 from all four of the witnesses that the Court heard  14 from. But I don't think that that means by  15 definition that Mr. Anderson can't make his motion,  16 because I've heard all of the evidence. The parties  17 through effective collegiality and professionalism  18 said, Let's just present the evidence in this way.  19 Boom.</p> <p>20 You could have gone forward, Mr. Nork, and  21 called all the witnesses that you wanted to call and  22 called Mr. Skarpelos. He could have testified. You  23 could have called Mr. Pedafronimos and had him  24 testify and then said, We rest. But you didn't.</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. NORK: That's right.</p> <p>2 THE COURT: So, I mean, the Court has heard</p> <p>3 now, I think, all of the issues and all of the</p> <p>4 evidence regarding the issues of the breach of</p> <p>5 contract, the breach of covenant of good faith and</p> <p>6 fair dealing, and, obviously, all the issues</p> <p>7 regarding the interpleader.</p> <p>8 So, what's the harm in deciding it now as</p> <p>9 opposed to hearing closing arguments?</p> <p>10 MR. NORK: I'm in no way suggesting that</p> <p>11 Mr. Anderson is not allowed to make his motion. My</p> <p>12 point is simply, what's the point? If we're going</p> <p>13 to have closings tomorrow, why needlessly create</p> <p>14 potential issues on appeal relying on a 52(c) motion</p> <p>15 when this Court can tomorrow issue an order on the</p> <p>16 entirety of the case.</p> <p>17 THE COURT: Well, Mr. Anderson also is not</p> <p>18 just arguing about the contract, the breach of</p> <p>19 contract and the breach of the implied covenant of</p> <p>20 good faith and fair dealing. He's saying he's</p> <p>21 bringing the motion regarding also the declaratory</p> <p>22 relief action.</p> <p>23 MR. NORK: I understand that, your Honor.</p> <p>24 THE COURT: Okay. I mean, I guess if I</p>	<p style="text-align: right;">Page 179</p> <p>1 ruled in favor of Mr. Skarpelos on all three causes</p> <p>2 of action that you brought, would you disagree with</p> <p>3 Mr. Anderson's position that we're back to where the</p> <p>4 parties were at the inception, which is that Mr.</p> <p>5 Skarpelos is the only identified owner of the shares</p> <p>6 of stock in question?</p> <p>7 MR. NORK: If your Honor dismissed all</p> <p>8 three of my claims, the stock would be Mr.</p> <p>9 Skarpelos, correct.</p> <p>10 Moving on from that procedural observation,</p> <p>11 the focus of the argument from Mr. Anderson is that</p> <p>12 the pleadings say "July 2013," the evidence says</p> <p>13 April 2013, we should win on the -- we should be</p> <p>14 dismissed or, rather, the Weiser entities should be</p> <p>15 dismissed. If this, your Honor, sounds familiar</p> <p>16 it's because this argument has already been made and</p> <p>17 rejected by this court. Specifically, in</p> <p>18 Mr. Skarpelos' reply in support of motion for</p> <p>19 summary judgment that was filed April 27th, 2018,</p> <p>20 Mr. Skarpelos argued at page 5, "The pleadings make</p> <p>21 no mention of a purported April contract. Weisers</p> <p>22 have not filed a motion to amend their pleadings to</p> <p>23 include a claim based upon an equal contract."</p> <p>24 This Court considered that argument and</p>
<p style="text-align: right;">Page 180</p> <p>1 rejected it in its order denying motion for summary</p> <p>2 judgment. The motion for summary judgment order was</p> <p>3 entered on June 21st, 2018. This court at page 6</p> <p>4 observed the following, "The reply contends summary</p> <p>5 judgment in Skarpelos' favor is appropriate</p> <p>6 notwithstanding the fact issue raised by the account</p> <p>7 statement for the following reasons: One, Weiser</p> <p>8 did not plead its theory that the written contract</p> <p>9 was a memorialization of the earlier agreement."</p> <p>10 The Court then continued on that same page</p> <p>11 at line 11, "First, Weiser was not required to plead</p> <p>12 its claims with specificity to justify the reply.</p> <p>13 Nevada is a notice pleading jurisdiction," and the</p> <p>14 Court cited to Hay vs. Hay. The Court continues,</p> <p>15 "Advanced by the opposition is not inconsistent with</p> <p>16 the allegations of Weiser's cross-claim." Then the</p> <p>17 Court continued at the very bottom of page six, "The</p> <p>18 theory is supported by the account statement which</p> <p>19 shows Weiser made a payment to Skarpelos for the</p> <p>20 disputed stock."</p> <p>21 So, this matter has been raised and</p> <p>22 rejected by this Court already. What is also</p> <p>23 important is not just that factual history but the</p> <p>24 other -- the overarching factual history of this</p>	<p style="text-align: right;">Page 181</p> <p>1 case in its entirety. On August 12th, 2016, in</p> <p>2 Weiser's initial disclosures, the account statement</p> <p>3 was produced as Weiser 378. That is Exhibit 43 in</p> <p>4 this case. On January 30th, 2017, Weiser entities</p> <p>5 produced Weiser 407, which is the account statement</p> <p>6 that is Exhibit 44 in this case, motion for summary</p> <p>7 judgment -- excuse me -- in opposition to the motion</p> <p>8 for summary judgment and Mr. Livadas' declaration in</p> <p>9 which he argues that there was a sale in April of</p> <p>10 2013 was filed on April 12th, 2018.</p> <p>11 As I just mentioned, the Court's motion for</p> <p>12 summary judgment order was entered on June 21st,</p> <p>13 2018. And then, importantly, what has happened</p> <p>14 since that time is that we all flew to Athens in</p> <p>15 October 2018 and conducted three days of discovery</p> <p>16 regarding this very issue, whether the sale was</p> <p>17 April of 2018, July of 2018, or some other date, and</p> <p>18 counsel for Mr. Skarpelos was entitled to ask as</p> <p>19 many questions as he wanted regarding that issue.</p> <p>20 So, the fact of the matter is this: This</p> <p>21 issue is not inconsistent with the cross-claim and</p> <p>22 it has been at issue in this case for at least --</p> <p>23 well, certainly since the time of the opposition in</p> <p>24 Mr. Livadas' declaration in April of 2018, but I</p>

<p style="text-align: right;">Page 182</p> <p>1 would argue also in the account statements that were 2 produced at the very beginning of this case.</p> <p>3 As the Court properly observed, Rule 8 is 4 very broadly interpreted in this case. In fact, the 5 Hay vs. Hay case that was cited to you by the -- by 6 this court in the order denying the motion for 7 summary judgment has held, "Because Nevada is a 8 notice pleading jurisdiction our courts literally 9 construe pleadings that place into issue matters 10 which are fairly noticed to adverse party." That 11 court continued to state, "A complaint must set 12 forth sufficient fact to establish all necessary 13 elements of a claim for relief so that the adverse 14 party has adequate notice of a claim and relief 15 sought."</p> <p>16 All that needed to be alleged in this case, 17 your Honor, was that there was an agreement to sell 18 stock that was breached, period, and that's the 19 point.</p> <p>20 THE COURT: That might be true, Mr. Nork, 21 but what about the argument that when you -- and I 22 by "you," I mean your filing of your cross-claim -- 23 make a more specific identification of a contract? 24 You're saying, It's this contract which we base our</p>	<p style="text-align: right;">Page 183</p> <p>1 cause of action on. You have gone beyond simply the 2 notice pleading, which is all you're required to do 3 under Hay vs. Hay and directed more specific 4 analysis. You're saying it's because of this 5 July 13th contract that we entered into. That's how 6 it's plead. There's no question that that's how 7 it's plead as identified by Mr. Anderson.</p> <p>8 So, while you might have just been able to 9 -- I say get away with it, that sounds more 10 pejorative than I intended, but get away with 11 pleading and saying, We had a contract. A contract 12 was entered into in 2013. Then there's the argument 13 was it the April contract? Well, you've been put on 14 notice that it's the April deal, not the aborted 15 July deal that we're talking about. Maybe Hay vs. 16 Hay is persuasive.</p> <p>17 But under the circumstances, Mr. Livadas 18 has specifically identified Exhibit 30 as the 19 contract wherein Mr. Skarpelos agreed to sell the 20 Weiser entity, whatever that Weiser entity is, these 21 specific shares. So, you made your -- I'm trying to 22 think of a better way to put this. But, in essence, 23 you made your bed by being as specific as you were.</p> <p>24 MR. NORK: And, your Honor, to --</p>
<p style="text-align: right;">Page 184</p> <p>1 THE COURT: -- over specificity.</p> <p>2 MR. NORK: -- to hold the Weiser entities 3 to that standard ignores all of the discovery that's 4 taken place in this case.</p> <p>5 Now, we can talk about the appropriate 6 application of NRCP 50(b) motion, but I don't think 7 that's applicable in this case, nor is it necessary 8 in this case because the matter has been at issue, 9 it has been tried, and discovery has been conducted 10 on that issue. The issue is the stock sale in April 11 of 2013.</p> <p>12 Mr. Skarpelos cannot argue with a straight 13 face that they had no idea when they walked in the 14 courtroom on Monday that the argument was going to 15 be that there was an April 2013 stock sale. The 16 reason I know that is because Mr. Livadas said it in 17 the opposition motion for summary judgment and Mr. 18 Livadas testified for eight hours in Athens, Greece, 19 on that very subject. So, there was no surprise, 20 there was no unfairness, there was no prejudice.</p> <p>21 This issue -- this factual allegation has been at 22 issue in this case for almost a year at least, and I 23 would argue even longer in light of the account 24 statements.</p>	<p style="text-align: right;">Page 185</p> <p>1 Moving forward beyond that, your Honor, the 2 line of inquiry is, Can the claims being set forth 3 in the cross-claim be maintained under the 4 controlling law? That's the question. So, the 5 question is, What is the law? We have set forth in 6 our trial statement what the elements are for each 7 claim for relief, declaratory judgment, breach of 8 contract, and breach of the covenant of good faith 9 and fair dealing.</p> <p>10 I don't think there is any doubt that the 11 elements of declaratory judgment claim have been 12 asserted in this case. Mr. Livadas has provided 13 testimony that there is a controversy in which a 14 claim is being asserted and being contested, the 15 party has a legal interest in the controversy. Mr. 16 Livadas has testified at great length why the stock 17 went through W.A.M. and why it is entitled to be 18 returned to W.A.M. and the issue must be ripe for 19 judicial determination.</p> <p>20 The issue's been ripe for quite some time. 21 Those elements are set forth in Crest v. Corey. I 22 also set forth the elements of the claim for breach 23 of contract, which is the Signe vs. IGT case, and I 24 also set forth the elements which breach the</p>

<p style="text-align: right;">Page 186</p> <p>1 covenant, which is Branch Banking and Trust vs. West 2 Star Properties. 3 Now, Mr. Anderson argued that there's no 4 contract because there's been no meeting of the 5 minds, and that's where the Certified Fire 6 Protection case becomes instructive once again. The 7 Certified Fire Protection case says, "A meeting of 8 the minds exists when the parties have agreed upon 9 the contract's essential terms," citing to Roth vs. 10 Scott. The Certified Fire Protection case 11 continues, "Which terms are essential depends on the 12 agreement and its context and also on the subsequent 13 conduct of the parties, including dispute which 14 arises and the remedy sought." That's a citation to 15 the restatement section of the contracts. 16 So, according to Nevada law, this court can 17 look at the subsequent conduct of the parties to 18 determine if there was a meeting of the minds. And 19 a great deal of testimony and evidence has provided 20 -- has been provided to that effect over the past 21 few days. Specifically, there's been evidence 22 provided by Lambros Pedafronimos that there was an 23 instruction to sell stock in March of 2013. 24 You have the testimony of Mr. Livadas that</p>	<p style="text-align: right;">Page 187</p> <p>1 he, in fact, sold the stock in April of 2013. 2 You've got the account statement, which is Exhibit 3 44, that's been admitted into evidence. You've got 4 a significant amount of circumstantial evidence that 5 lends additional credence to the accuracy of that 6 account statement specifically coming through Mr. 7 Livadas and Mr. Pedafronimos. 8 In other words, the subsequent conduct of 9 the parties as alleged by the Weiser defendants, 10 which is the withdrawal of money after that stock 11 was sold in April 2013, evidences a meeting of the 12 minds about the sale of the stock in April 2013. 13 Mr. Skarpelos got exactly what he bargained for, 14 \$25,000. Mr. Livadas and his entities did not. 15 THE COURT: I don't know that that's the 16 case, Mr. Nork. Explain this to me: Mr. Livadas 17 and his entities, by Mr. Livadas' own testimony, 18 were not purchasing the stock at issue, assuming 19 that it took place. They weren't purchasing the 20 stock at issue to own it. 21 They were a transferee, as he described it, 22 in the blink of an eye. It was just transferring 23 through him. All he was doing what the contract 24 arguably was because Mr. Livadas and Mr. Skarpelos</p>
<p style="text-align: right;">Page 188</p> <p>1 and by Mr. Livadas -- and by "Mr. Livadas" I'm just 2 referring to the Weiser entities in general -- was 3 for \$420. That was the transfer fee. 4 The notion somehow that Mr. Livadas 5 intended to personally or on behalf of Weiser buy 6 and maintain these 3.3 million shares of stock is 7 not consistent with his testimony or not consistent 8 with anybody's testimony. 9 MR. NORK: Well, your Honor -- 10 THE COURT: It wasn't -- you know, it's not 11 like Mr. Livadas was selling you the stock and you 12 were going to hold it for Mr. Skarpelos, I should 13 say. He's not selling it to Mr. Livadas. There's 14 no testimony before me that it's being sold to the 15 Weiser entities or Mr. Livadas. 16 If anything, Mr. Livadas himself is 17 acknowledging the whole purpose of the transaction 18 in April of 2013 was to transfer the stock to some 19 unknown, more unidentified person or entities, and 20 that's what they did. So, he's not buying it in the 21 sense, you know, I want to buy this car. He's 22 transferring it to someone else. 23 MR. NORK: Your Honor -- 24 THE COURT: He got the bargain of his</p>	<p style="text-align: right;">Page 189</p> <p>1 contract in that he got the 420 bucks. I think it 2 was 420 or 480. I can't remember which. 3 MR. NORK: I'm not sure, your Honor, that's 4 entirely correct, because not only the testimony of 5 Mr. Livadas, but also the testimony of Mr. Walker 6 indicated that an entity like W.A.M. holds the stock 7 for the beneficial ownership of its account-holders. 8 And, indeed, I went through the effort of 9 drawing the picture that is on the board that 10 indicates that the W.A.M. customer, the W.A.M. 11 buyer's account at W.A.M. is credited with the 12 stock. Now, it's true that -- and W.A.M. has the 13 responsibility of holding that account and keeping 14 that account for that W.A.M. buyer. 15 Now, title to the stock may not be in 16 W.A.M.'s name but it goes into the W.A.M. account 17 for the benefit of the W.A.M. buyer, and that -- 18 THE COURT: But, then, wouldn't the W.A.M. 19 buyer be the real party in interest, Mr. Nork? 20 MR. NORK: No. Because W.A.M. as the 21 broker/dealer was exposed to liability and covered. 22 The W.A.M. buyer never knew that its beneficial 23 ownership of that stock was in jeopardy. 24 THE COURT: But that circles around, too,</p>

<p style="text-align: right;">Page 190</p> <p>1 another entire big issue in the case, Mr. Nork. And</p> <p>2 I'm not just trying to focus and argue with you,</p> <p>3 because I know I didn't ask Mr. Anderson any</p> <p>4 questions. I anticipated and his argument was</p> <p>5 basically what I thought it would be.</p> <p>6 I don't know, because there's been zero</p> <p>7 testimony, about what the damages are, how Mr.</p> <p>8 Livadas covered this. All he said was, We had to</p> <p>9 make it right and that we had to do some margin</p> <p>10 calls or buy some stock on margin. I don't know any</p> <p>11 of the information that would -- beyond his</p> <p>12 testimony, and that's all his testimony was.</p> <p>13 He didn't identify how much this</p> <p>14 replacement stock cost them, what damages they</p> <p>15 incurred as a result to the -- none of that, because</p> <p>16 he claimed it was privileged and confidential</p> <p>17 information.</p> <p>18 MR. NORK: That's correct.</p> <p>19 THE COURT: So, all I know is he said, We</p> <p>20 had to go out into the marketplace and buy</p> <p>21 replacement stock to cover the issue. Because the</p> <p>22 ultimate W.A.M. purchaser as we're describing them,</p> <p>23 as Mr. Livadas says, he doesn't care. He or she or</p> <p>24 it, they don't care. They just want the stock.</p>	<p style="text-align: right;">Page 191</p> <p>1 MR. NORK: Correct.</p> <p>2 THE COURT: I bought Anavex stock and I</p> <p>3 want to know that in my account at W.A.M. there are</p> <p>4 X number of shares of Anavex, and they don't care</p> <p>5 how it gets there. Mr. Livadas isn't the person</p> <p>6 saying, I'm entitled to that stock. At best, he's</p> <p>7 saying, I had to go out and secure that stock to</p> <p>8 make it good.</p> <p>9 That arguably could be some level of</p> <p>10 damages but I don't even know what the damages are.</p> <p>11 It hasn't been demonstrated to me. And there's been</p> <p>12 no testimony. As I've considered all the testimony</p> <p>13 of all the witnesses in the case, there's been no</p> <p>14 testimony that Mr. Livadas or the entities which he</p> <p>15 controls or owns or is involved in ever were</p> <p>16 supposed to be the ultimate owners of 3.3 million</p> <p>17 shares of Anavex stock. I just haven't heard it.</p> <p>18 MR. NORK: Well, your Honor --</p> <p>19 THE COURT: Just so you know, I understand</p> <p>20 everything that you've got on the three large pieces</p> <p>21 of paper that you've drawn. I understand all of</p> <p>22 your arguments, but in the end there's all kinds of</p> <p>23 stuff going on in this case. I understand that.</p> <p>24 There's money, arguably, being moved from one person</p>
<p style="text-align: right;">Page 192</p> <p>1 to the other. Mr. Pedafronimos says that he got</p> <p>2 money but it wasn't from -- supposed to be from any</p> <p>3 dealings with W.A.M. It was from his Vermont</p> <p>4 account. Mr. Skarpelos says, I never got a nickel</p> <p>5 from W.A.M. under any circumstances, period, full</p> <p>6 stop. Mr. Livadas is saying that, I'm transferring</p> <p>7 all of this money out of Mr. Skarpelos' account and</p> <p>8 giving it to Mr. Pedafronimos.</p> <p>9 Again, all of that, I get it but I still</p> <p>10 circle back to the same point, which is Weiser, the</p> <p>11 Weiser entities, it has not been demonstrated to me</p> <p>12 are ever the actual intended purchaser or owner of</p> <p>13 these shares of stock, even if we look at just the</p> <p>14 April deal. The April deal is a sale from Mr.</p> <p>15 Skarpelos through W.A.M. to another W.A.M. client,</p> <p>16 so the end owner is never Weiser. The end owner, as</p> <p>17 demonstrated by your own document or your own</p> <p>18 drawing there on the far right, is the W.A.M. buyer.</p> <p>19 Now, his, her or its account is credited</p> <p>20 for -- I'll say parenthetically, Mr. Livadas</p> <p>21 identified it wasn't one person or entity.</p> <p>22 MR. NORK: That's correct, your Honor.</p> <p>23 THE COURT: It was broken up to numerous</p> <p>24 people, all W.A.M. customers. So, all of those</p>	<p style="text-align: right;">Page 193</p> <p>1 W.A.M. customers presumably had their W.A.M.</p> <p>2 accounts credited with Anavex stock in the amounts</p> <p>3 they purchased putatively from Mr. Skarpelos.</p> <p>4 They're the end owners. They're the ones who are</p> <p>5 owning the stock. He had to go cover it. He had to</p> <p>6 somehow get it into their account, but that -- I</p> <p>7 still don't understand how that means that there's a</p> <p>8 contract that Mr. Skarpelos meant to sell Mr.</p> <p>9 Livadas or any of his entities these 3.3 million</p> <p>10 shares of stock.</p> <p>11 MR. NORK: Well, your Honor, two things.</p> <p>12 First of all, Mr. Livadas testified -- and it's</p> <p>13 written on the board -- that an award of the</p> <p>14 3.3 million shares of stock allows him to reconcile</p> <p>15 what is currently an unbalanced account at W.A.M.</p> <p>16 THE COURT: But okay. Let's stop right</p> <p>17 there. I don't even know, because nobody's told me</p> <p>18 as I sit here today, what 3.3 million shares of</p> <p>19 Anavex stock are worth. Evidence is closed, so I</p> <p>20 don't want to hear about it. I just don't know.</p> <p>21 All I know is that back in 2013 Mr.</p> <p>22 Skarpelos and Mr. Livadas agreed in general, after</p> <p>23 some negotiation, that the value of that stock was</p> <p>24 seven or eight cents per share, because that's how</p>

<p style="text-align: right;">Page 194</p> <p>1 they came up with \$500,000 for the whole thing or 2 \$250,000 for the half of it.</p> <p>3       You're suggesting that somehow Mr. Livadas 4 should be given those 3.3 million shares. If he was 5 never the intended owner of them, how is that 6 correct? Let's assume for the sake of argument that 7 the stock now is worth 16 cents share. He's getting 8 twice as much as even, arguably, the end user should 9 have gotten. Maybe it's worth a dollar a share. 10 He's getting over ten times the amount if I were to 11 award him the 3.3 million shares.</p> <p>12       So, he's getting a huge benefit that. Even 13 if I assume that there's a contract, there's -- I 14 don't know that the evidence is that the parties 15 intended that he get that windfall. Maybe at best 16 he would be entitled to whatever amount of damages 17 the Weiser entities suffered as a result of having 18 to cover all of their customers' positions. So, 19 let's say they had to go to the market and they 20 agree it's seven cents a share and he has to buy for 21 10 cents a share. Maybe, arguably, under those 22 circumstances, if I knew that information, he may be 23 entitled to some damages.</p> <p>24       But nobody's even told me what the coverage</p>	<p style="text-align: right;">Page 195</p> <p>1 was, what the margins were, how much they're out, 2 because he told me it was all confidential and 3 privileged and he can't tell me.</p> <p>4       MR. NORK: And, your Honor, I don't think 5 that matters. I think that loses sight of the 6 agreement between W.A.M. and Mr. Skarpelos. The 7 agreement between them, as testified by Mr. Livadas, 8 was 3.3 million shares for \$250,000, period. What 9 W.A.M. does with that stock is, as between W.A.M. 10 and Mr. Skarpelos, completely irrelevant, your 11 Honor. Mr. Skarpelos gets his money and the account 12 statement, Exhibit 44, demonstrates that, and W.A.M. 13 is supposed to get 3.3 million shares of stock.</p> <p>14       Now, if W.A.M. goes out and gives the 15 people that gave W.A.M. the money that got 16 transferred over to Mr. Skarpelos, what difference 17 does that make to Mr. Skarpelos? It doesn't. The 18 agreement is between those two parties, W.A.M. and 19 Mr. Skarpelos. The value of the stock doesn't 20 matter, the trading value, amount of cover, none of 21 that matters, your Honor.</p> <p>22       THE COURT: Isn't that a term of the 23 contract, Mr. Nork? You're suggesting that the 24 contract between the parties, assuming that there is</p>
<p style="text-align: right;">Page 196</p> <p>1 a contract, is Mr. Skarpelos telling Mr. Livadas, 2 I'll sell you the shares. But that's not consistent 3 with what the testimony has been in the trial. The 4 testimony -- and by "you" I mean Weiser.</p> <p>5       The testimony is that he's selling it to 6 other people, not specifically Mr. Livadas or the 7 Weiser entities. He's selling it to some 8 third-party, assuming that there's a contract that 9 exists.</p> <p>10       MR. NORK: Your Honor, the April 2013 11 transaction is a sale of stock. Mr. Skarpelos in 12 April 2013 did not care who the buyer was, wanted 13 to -- needed \$250,000. It was restricted stock so 14 it couldn't be sold on the open market. It had to 15 be a private sale. He needed cash. He needed 16 \$250,000 and didn't care the identity of the buyer.</p> <p>17       Mr. Livadas said, I'm W.A.M. I'll take 18 care of it. Here's \$250,000 and the stock was 19 supposed to be transferred to W.A.M. And then 20 W.A.M. can do with it as it sees fit. What it's 21 supposed to do is give that stock to the people who 22 transferred its money to W.A.M. It doesn't matter, 23 your Honor, the cover, the identity of the buyers. 24 It loses sight of the simplicity of the transaction,</p>	<p style="text-align: right;">Page 197</p> <p>1 which is W.A.M. is willing to buy 3.6 million shares 2 of stock from Mr. Skarpelos, period, and that, your 3 Honor, did not happen.</p> <p>4       Exhibit 44 and the testimony of Mr. Livadas 5 evidenced the \$250,000 got credited to 6 Mr. Skarpelos' account. The testimony of 7 Mr. Pedafronimos and Mr. Livadas strongly suggests 8 -- I would argue this tomorrow -- that money is 9 coming out of the account after the \$250,000 went 10 in, but the stock never went -- the other part of 11 the deal never took place. And that's the breach, 12 your Honor and that's the dispute. And that's why 13 it doesn't matter what the trading value is. It's 14 the simple transaction. Sell 3.3 million shares of 15 stock for \$250,000. That's what happened.</p> <p>16       In light of that simplicity, your Honor, 17 and the fact that that has been before the parties 18 for almost a year, if not longer, I would ask that 19 the motion be denied. Thank you.</p> <p>20       THE COURT: Thank you, Mr. Nork.</p> <p>21       Mr. Anderson, you don't have to raise all 22 of the issues I raised with Mr. Nork, but if you 23 could at least at some point in your reply argument 24 focus on Mr. Nork's contention that Nevada is a</p>



<p style="text-align: right;">Page 198</p> <p>1 notice pleading state, which I acknowledge, that you  2 were put on notice about the contract in question,  3 and so the reference is to a July 13th contract  4 repeatedly in Weiser's cross-claim against Mr.  5 Skarpelos really are of no moment, because  6 throughout the discovery process it was made clear  7 to you both in depositions and in the discovery  8 itself and in Mr. Livadas' declaration in support of  9 the opposition to the motion for summary judgment  10 that you were at least on notice of the theory that  11 they were going on during the course of the trial.  12 MR. ANDERSON: Yes, your Honor. I'd be  13 happy to. I'll address that first.  14 Your Honor ruled on the summary judgment.  15 I agree that Mr. Nork accurately read the briefing  16 and the order. The Court ruled the way it did, and  17 we respect that.  18 And based on that direction, we did go on  19 and complete discovery. We did fly all the way to  20 Athens in October of 2018 to find out the answer to  21 the burning question, Which Weiser entity is  22 claiming to be the owner of the stock.  23 And to answer the Court's question about  24 his declaration -- I think I used this with Mr.</p>	<p style="text-align: right;">Page 199</p> <p>1 Livadas quite frequently on the stand -- that  2 declaration submitted in April of 2018 in support of  3 Weiser's opposition to the motion for summary  4 judgment, I pointed this out to him, I believe, on  5 cross-examination.  6 If you look at paragraph 13, lines 25 and  7 26, it reads, "In April 2013 Skarpelos sold  8 3,316,666 shares of Anavex shares he had deposited  9 with W.A.M. in 2011 to Weiser Capital in exchange  10 for \$250,000 minus the \$420 processing fee, which I  11 helped arrange."  12 And you might recall, your Honor, that I  13 presented this document to Mr. Livadas because it  14 was in response to his testimony when I asked him  15 about what he testified to in his deposition, which  16 was, Oh, I said at my deposition that the stock was  17 sold to Weiser Capital and the purpose of the July  18 contract was to document the April 2nd transaction.  19 When I asked him about that -- and I'll  20 point that deposition testimony to you in a minute.  21 When I asked him about that at trial, he said, Oh, I  22 must have been confused at my deposition. So, I  23 presented him with his declaration and asked him,  24 Well, a year ago -- as Mr. Nork points out, we were</p>
<p style="text-align: right;">Page 200</p> <p>1 on notice of this claim a year ago -- it was that  2 the stock ownership was claimed by Weiser Capital,  3 not Weiser Asset Management.  4 And so I'm going to refer you back to his  5 deposition, your Honor. And I confronted him with  6 this testimony during cross-examination as well. As  7 the Court may recall, when this issue first came up  8 on Monday, it was the afternoon. I think it was  9 right before lunch, actually. Mr. Livadas talked  10 about the story for the first time, that the sale  11 was between Mr. Skarpelos and W.A.M. on April 2nd,  12 2013 and that the July dealings back and forth was  13 for a future sale that never happened.  14 That was the first time I'd heard that  15 story and so I said -- I thought to myself, you  16 know, I know I talked about this with him in his  17 deposition. So, I went to lunch and I was combing  18 through his deposition and I couldn't find the  19 testimony and the Court may recall I was fumbling  20 around looking for it.  21 But I went home that night and found page  22 228 near the end of his deposition and I read this  23 to him in the record. Starting at line 6,  24 "Question: I'll just ask you this" --</p>	<p style="text-align: right;">Page 201</p> <p>1 THE COURT: Sorry about that. I just  2 dropped the deposition.  3 MR. ANDERSON: This is page 228 of Mr.  4 Livadas' October 23rd, 2018, deposition. "I'll  5 just ask you this question. Exhibit 25, the  6 purchase and sale agreement that we looked at  7 earlier, that document was intended to, I guess,  8 document the arrangement that you had with Mr.  9 Skarpelos that resulted in the April 2nd  10 transaction.  11 "Answer: Yes, correct."  12 Now, it was clear at trial that Exhibit  13 25 -- Deposition Exhibit 25 was Trial Exhibit 30 in  14 this and that agreement, stock sale and purchase  15 agreement, identifies on the first page "Weiser  16 Limited," and I clarified with him at his deposition  17 and again at trial that the actual entity that he's  18 talking about on page 228 of his deposition is  19 Weiser Bahamas Limited aka Weiser Capital. So, in  20 his Deposition Exhibit 25 is Trial Exhibit 30, and I  21 don't think he disputed that. I don't think anyone  22 disputes that.  23 And so his deposition -- and this gets back  24 to the notice pleading issue that your Honor asked</p>

<p style="text-align: right;">Page 202</p> <p>1 me about -- Mr. Nork's absolutely right. We did get  2 Mr. Livadas' declaration in April of 2018, yeah,  3 2018. We saw that and we said, Wow, you know, this  4 is actually someone claiming ownership, not just  5 Weiser. It's one of the entities claiming ownership  6 so I'm -- I wasn't involved in discovery at that  7 point.  8 But I did travel to Athens and I  9 specifically asked him, as Mr. Nork pointed out, a  10 number of questions. And this is not the last  11 question of the deposition but it's darn close. And  12 it culminated in Mr. Livadas telling me without any  13 hesitation or -- it was unequivocal that what their  14 claim was was Weiser Capital was claiming ownership  15 of the stock based on an April 2nd, 2013,  16 transaction that is documented in Trial Exhibit 30.  17 That was their claim.  18 So, your Honor, what I did is I relied on  19 that testimony, I accepted it, and everything I've  20 done to prepare for this trial since then is based  21 on that claim. You might recall from our trial  22 statement and my proposed findings of fact and  23 conclusions of law that I was operating under the  24 assumption that Mr. Livadas was telling me the truth</p>	<p style="text-align: right;">Page 203</p> <p>1 that Weiser Capital was claiming to be the owner of  2 the stock. And I probably spent four or five pages  3 of my trial statement talking about that issue and  4 how he also testified at the deposition that Weiser  5 Capital was no longer the owner because it was a  6 split second or nanosecond intermediary to a third  7 party that he wouldn't identify at the deposition  8 and that he didn't know if they had done something  9 else with the stock.  10 And at that time he didn't mention anything  11 about whether Weiser Capital, or W.A.M. for that  12 matter, had sustained any damages as a result of  13 Mr. Skarpelos' alleged breach.  14 So, I agree with Mr. Nork that, although  15 not specifically stated in their pleadings, we  16 investigated that claim based on that and when I was  17 told by Mr. Livadas that the July transaction was  18 documenting the April transaction, I relied on that  19 to assume that that's what they were referring to in  20 their pleading.  21 And so we come to trial and I hear for the  22 first time ever that what they're really claiming is  23 Weiser Asset Management is the party that's claiming  24 entitlement to the stock, not Weiser Capital that</p>
<p style="text-align: right;">Page 204</p> <p>1 they've been leading us to believe the whole year.  2 So, I would disagree with Mr. Nork that there's no  3 surprise, there's no prejudice, there's no harm to  4 Mr. Skarpelos in them making that claim right now  5 because, I'll tell you, there was harm to me. I  6 stayed up until 12:00 or 1:00 in the morning looking  7 for that testimony that I was absolutely certain I  8 had discussed with him but couldn't find over the  9 lunch hour on Monday.  10 So, it is prejudicial to Mr. Skarpelos.  11 It's absolutely a surprise and I'm not -- you know,  12 I understand the theories evolve over the course of  13 a case, but this is absolutely unfair surprise and  14 it's not the kind of notice pleading that the  15 Court's talking about.  16 If they were really claiming an April 2nd  17 transaction, nothing in NRCP -- sorry. They weren't  18 required to specify a contract, but when they did  19 and when we investigated it and were told that yes,  20 it is the July contract, it documents the April  21 transaction, that's what we operated on right up  22 until January 28th, 2019.  23 THE COURT: Mr. Anderson, excuse me for  24 interrupting you. But what about the suggestion</p>	<p style="text-align: right;">Page 205</p> <p>1 that Mr. Nork makes that 52(c) is, in essence, a  2 time-saving mechanism by -- or for the Court? It's  3 the judicial economy rule of civil procedure in that  4 when one has a standard bench trial, the plaintiff  5 presents his, her, or their case and then they say,  6 We rest. And at that point the defendant normally  7 stands up pursuant to Rule 52(c) and begins to argue  8 that the plaintiffs, in essence, have not made their  9 case. And there really isn't a reason for the  10 defense to go forward and present any evidence or  11 call any witnesses. Rule 52(c) says let's stop it  12 right now because they haven't presented their case.  13 Now the court has heard all the evidence of  14 the case. It's all in. What is the practical  15 benefit of my considering this issue now as opposed  16 to just going forward hearing closing arguments  17 tomorrow, and then I'll make a ruling, decide based  18 on the evidence whether or not there's a contract.  19 I'll decide based on the evidence whether or not the  20 implied covenant of good faith and fair dealing has  21 been violated, assuming I find there's a contract.  22 And then I just make a decision regarding  23 the declaratory relief claims of the two parties,  24 not really saving any time. If anything, we're</p>

<p style="text-align: right;">Page 206</p> <p>1 expending time today by discussing this issue in the 2 first case.</p> <p>3 MR. ANDERSON: Aside from the fact that I 4 could go to the Santa Fe dinner and enjoy a dinner 5 with my wife and not have to go into oral argument 6 -- I'm just joking for the record.</p> <p>7 THE COURT: That's okay.</p> <p>8 MR. ANDERSON: Your Honor, I think you and 9 Mr. Nork agreed that there are certainly procedural 10 aspects of it and certainly efficiency aspects to 11 it. I acknowledge the cases that were cited. But 12 you both agreed that it doesn't mean it's not a 13 legally viable motion. Mr. Skarpelos believes that 14 he has a legally viable motion and he's submitted 15 it.</p> <p>16 Now, I think based on the argument I just 17 made and their statements that there really is no 18 legal basis for their claims. And so does it save 19 the Court time to delve into credibility of 20 witnesses and complex transactions trying to piece 21 together documents that should have been in W.A.M.'s 22 possession from the get-go if they hadn't given the 23 transactions.</p> <p>24 I do agree that with the Court that there</p>	<p style="text-align: right;">Page 207</p> <p>1 are these procedural benefits but in this case I 2 just don't think the Court has to get there.</p> <p>3 THE COURT: Well, I think under the 4 Certified Fire Protection Incorporated case I do 5 have to consider the credibility of the witnesses. 6 One of the interesting things about that case is -- 7 page 378 of the Nevada Reporter -- where -- strike 8 that. It's not there. It's page 377.</p> <p>9 The Nevada Supreme Court says, "NRCP 52(c) 10 allows the district court in a bench trial to enter 11 judgment on partial findings against a party when 12 the party has been fully heard on an issue and 13 judgment cannot be maintained without a favorable 14 finding on that issue. Although Certified argues 15 otherwise, in entering a Rule 52(c) judgment, quote, 16 the trial judge is not to draw any special 17 inferences in the non-moving's favor, closed quote, 18 and then again, "since it's a nonjury trial, the 19 court's task is to weigh the evidence."</p> <p>20 And those two internal quotes cite back to 21 9-C, Charles Wright and Arthur R. Miller's Federal 22 Practice and Procedures Rules, Section 2573.1 at 23 page 256 through 260, 3d Edition from 2008.</p> <p>24 So, really, it doesn't save me anything.</p>
<p style="text-align: right;">Page 208</p> <p>1 Even if I were to consider the 52(c) motion, I still 2 have to weigh the credibility of Mr. Livadas and 3 weigh the credibility of Mr. Skarpelos' testimony in 4 concluding or deciding whether or not Mr. Livadas 5 has proven his claims. I think I've already said it 6 before, but when I refer to "Mr. Livadas" I'm 7 referring to the Weiser entities identified in the 8 pleadings because we've kinda discussed them 9 interchangeably during the course of the trial. So, 10 I'm not really saving any time. I'd still have to 11 go through and make those same judgment calls and 12 credibility calls, balancing of the evidence 13 analysis.</p> <p>14 It's not an NRCP 56 motion where I can 15 consider all things in favor of the non-moving 16 party. Parenthetically, I'll also note that's why 17 the court's order regarding the motion for summary 18 judgment isn't controlling and doesn't cause me any 19 pause, because it's a completely different standard.</p> <p>20 When I made that ruling, I hadn't heard all 21 the evidence, judged the credibility of the 22 witnesses. I had to make all inferences and 23 inferential decisions in favor of the non-moving 24 party.</p>	<p style="text-align: right;">Page 209</p> <p>1 Just so you know, Mr. Nork, I'm not overly 2 persuaded that my order in June has any real 3 controlling or prejudicial effect of my analysis of 4 the Rule 52 motion because it's just a completely 5 different standard.</p> <p>6 MR. ANDERSON: Your Honor, I understand 7 those authorities. I can't remember the exact facts 8 of that case. I did read it at one point.</p> <p>9 THE COURT: It's an interesting contract 10 and subcontract case.</p> <p>11 MR. ANDERSON: In this case what we have is 12 you quoted the Rule 52 language and it was with 13 respect to a claim or issue. What we have here 14 that's being offered is a claim that's not been 15 asserted previously and an issue that's not been 16 asserted previously in the pleadings.</p> <p>17 Mr. Nork has never alleged -- well, they 18 alleged an April transaction in 2013 in Mr. Livadas' 19 declaration it was a sale to Weiser Capital, so that 20 may arguably have been at issue even though it's 21 totally at odds with their pleadings. So, we went 22 to Athens, Greece, and took the depositions and what 23 Mr. Livadas said again is, Oh, yeah, that April 2nd 24 transaction is embodied in the July 2013 agreement.</p>

<p style="text-align: right;">Page 210</p> <p>1 That was what we operated on.</p> <p>2 Now we're hearing a new theory that's never</p> <p>3 been given notice of, that there was an actual</p> <p>4 contract between Mr. Skarpelos and W.A.M. on</p> <p>5 April 2nd, 2013. And I think your Honor kinda hit</p> <p>6 the nail on the head. It appears what they're</p> <p>7 really claiming in that is it's a damages claim for</p> <p>8 having to rectify the situation with the supposed</p> <p>9 buyers who would be intended buyers of the contract.</p> <p>10 He talked about --</p> <p>11 THE COURT: Buyers of the stock.</p> <p>12 MR. ANDERSON: Yes, thank you, your Honor.</p> <p>13 What he was talking about is somehow W.A.M. has a</p> <p>14 beneficial ownership in that stock based on the</p> <p>15 something. Now, what is that something? It had to</p> <p>16 have been an agreement -- an account agreement that</p> <p>17 Mr. Skarpelos had with W.A.M. that would set forth</p> <p>18 certain terms and conditions saying we might act as</p> <p>19 intermediary. If you execute a transaction or a</p> <p>20 sale and you don't deliver the shares, you will</p> <p>21 indemnify us for any damages. Those things are what</p> <p>22 I think Mr. Livadas is saying he had to do to</p> <p>23 satisfy this frustrated buyer.</p> <p>24 So, really, they're relying on an entirely</p>	<p style="text-align: right;">Page 211</p> <p>1 new contract that's never been produced, never been</p> <p>2 discussed, and it's this account agreement that must</p> <p>3 have some sort of requirement that Mr. Skarpelos</p> <p>4 authorized W.A.M. to sell, you know, his shares</p> <p>5 through them to third parties.</p> <p>6 So, I understand what your Honor is saying</p> <p>7 about the procedural realities of Nevada Supreme</p> <p>8 Court case law but I don't believe that applies in a</p> <p>9 situation where what the real argument is now -- I</p> <p>10 think if we go tomorrow, we'll hear tomorrow -- is</p> <p>11 that W.A.M.'s entitled to ownership of the shares</p> <p>12 based on April 2nd, 2013, contract that has never</p> <p>13 been alleged or produced.</p> <p>14 THE COURT: Thank you, Mr. Anderson.</p> <p>15 Anything else you want to say about the argument</p> <p>16 that Mr. Nork made?</p> <p>17 MR. ANDERSON: No thank you, your Honor.</p> <p>18 THE COURT: What I'll do, Counsel, is look</p> <p>19 at the two cases cited by Mr. Nork, 123 Nevada and</p> <p>20 124 Nevada, and see if they change my analysis at</p> <p>21 all and then I'll be back to you in a moment, so</p> <p>22 everybody just be at ease. Court is in recess.</p> <p>23 (Recess taken.)</p> <p>24 THE COURT: Please be seated.</p>
<p style="text-align: right;">Page 212</p> <p>1 We'll go back on the record in Skarpelos</p> <p>2 vs. Weiser. The parties are all present as are</p> <p>3 their counsel.</p> <p>4 Mr. Nork, I did go and review the two cases</p> <p>5 that you cited in addition to the Certified Fire</p> <p>6 Protection Incorporated vs. Precision Construction</p> <p>7 Incorporated.</p> <p>8 One of them was Mosley vs. Eighth Judicial</p> <p>9 District, which is at 124 Nevada 654 188 Pacific 3d.</p> <p>10 1136. I have to admit that after I heard your</p> <p>11 arguments I thought there would be something more</p> <p>12 meaningful in those cases or in that case, but I</p> <p>13 couldn't even quite figure out why that case was of</p> <p>14 assistance to me in this case.</p> <p>15 What page were you citing me to? I went</p> <p>16 and looked at it and it was kind of a head-scratcher</p> <p>17 and I thought I must have missed something.</p> <p>18 MR. NORK: The Mosley case, your Honor?</p> <p>19 THE COURT: Yes. It primarily discusses</p> <p>20 NRCP 25 and Nevada Rule of Civil Procedure 6.</p> <p>21 MR. NORK: Yes, your Honor, and my</p> <p>22 reference to Mosley was -- I think this is maybe why</p> <p>23 unpublished decisions are not to be cited, because</p> <p>24 the pin cite was page 272, but I'm looking at Mosley</p>	<p style="text-align: right;">Page 213</p> <p>1 and there's no page 272.</p> <p>2 THE COURT: I agree with you totally that</p> <p>3 unpublished decisions are not particularly helpful.</p> <p>4 I did also look at D.R. Horton vs. Eighth</p> <p>5 Judicial District, 123 Nevada 468, and you directed</p> <p>6 me to page 481 -- it's also located at 168 Pacific</p> <p>7 3d 731 -- and, really, the only thing that they talk</p> <p>8 about there that is of some assistance to the court</p> <p>9 is a footnote. It's Footnote 32, the citation in</p> <p>10 the written portion of the pleading -- written</p> <p>11 portion of the case is, quote, In determining the</p> <p>12 reasonableness of a notice, a district court should</p> <p>13 keep in mind the judiciary's policy of maintaining</p> <p>14 judicial economy, the particular requirements and</p> <p>15 limitations set out in NRS Chapter 40 and the policy</p> <p>16 considerations discussed above.</p> <p>17 D.R. Horton is a construction defect case,</p> <p>18 as I'm sure the parties are aware given the</p> <p>19 reference to NRS Chapter 40. Footnote 32 is a</p> <p>20 citation that says, "See State vs. District Court,</p> <p>21 121 Nevada 225 at page 234 to page 235, 112 Pacific</p> <p>22 3d 1070 at page 1076, 2005 case, holding that "in</p> <p>23 the interest of promoting judicial economy, it was</p> <p>24 appropriate for the court to grant the relief</p>

<p style="text-align: right;">Page 214</p> <p>1 requested."</p> <p>2 Other than that, that case didn't help me</p> <p>3 very much either. I just want you to know, Mr.</p> <p>4 Nork, that I did look at them and try to get</p> <p>5 something out of them but was unable to get anything</p> <p>6 out of them.</p> <p>7 MR. NORK: Thank you, your Honor.</p> <p>8 THE COURT: So, we're left primarily with</p> <p>9 NRCP 52(c) and the Certified Protection Incorporated</p> <p>10 vs. Precision Construction Incorporated case located</p> <p>11 at 128 Nevada 371 283 Pacific 3d. 250 from 2012.</p> <p>12 Counsel, the court has considered the</p> <p>13 arguments and I would note that I don't think that</p> <p>14 Mr. Anderson's argument for NRCP 52(c) relief is</p> <p>15 inappropriate in that it's a waste of the court's</p> <p>16 time or of judicial resources to make the motion. I</p> <p>17 think it's an appropriately raised issue.</p> <p>18 However, in my review of NRCP 52(c), I</p> <p>19 don't think it's mandatory that the court grant the</p> <p>20 motion. I have considered it, and based on the</p> <p>21 unique factual circumstances of this case and, in</p> <p>22 essence, the way the evidence was presented through</p> <p>23 the stipulation of the parties in that there really</p> <p>24 wasn't a plaintiff presenting a case and a defendant</p>	<p style="text-align: right;">Page 215</p> <p>1 then rebutting that case and then possibly a</p> <p>2 cross-claim where there would be, you know, the</p> <p>3 evidence presented and then an NRCP 52(c) motion</p> <p>4 made and then, assuming that that motion is denied,</p> <p>5 then you go forward with the presentation of the</p> <p>6 defenses to the plaintiff's action, the court just</p> <p>7 finds under the circumstances that in the interest</p> <p>8 of judicial economy that granting the NRCP 52(c)</p> <p>9 motion is not warranted nor necessary because of the</p> <p>10 timing of the case and the stipulation of the</p> <p>11 parties and how the evidence would be presented.</p> <p>12 Again, Mr. Anderson, I want to emphasize I</p> <p>13 don't think that there's anything inappropriate</p> <p>14 about making the motion, but just based on the</p> <p>15 unique trial circumstances of this case, I think</p> <p>16 that it was more prudent to just hear the closing</p> <p>17 arguments of counsel and to judge the evidence and</p> <p>18 the credibility of the evidence in toto tomorrow,</p> <p>19 and so the request for relief pursuant NRCP 52(c) is</p> <p>20 denied. One thing I do want to check.</p> <p>21 In reviewing Subsection A of NRCP 52, the</p> <p>22 court doesn't believe it's necessary to set out the</p> <p>23 full findings of fact and conclusions of law. I'm</p> <p>24 denying the motion and I'll make the findings on the</p>
<p style="text-align: right;">Page 216</p> <p>1 record tomorrow when I hear oral argument. I think</p> <p>2 an argument could be made under NRCP 52(a) that</p> <p>3 there's some obligation to make findings of fact and</p> <p>4 conclusions of law and then the decision, but if you</p> <p>5 waive that, we'll just take care of that --</p> <p>6 MR. ANDERSON: If that is a requirement,</p> <p>7 I'll waive that, your Honor.</p> <p>8 THE COURT: Any objection to that, Mr.</p> <p>9 Nork?</p> <p>10 MR. NORK: No, your Honor. I didn't</p> <p>11 believe it was necessary.</p> <p>12 THE COURT: Okay. So, again, Counsel, it's</p> <p>13 not for future reference that I have some problem</p> <p>14 with NRCP 52 and bench trials. I just think based</p> <p>15 on the way this case has gone forward and the way</p> <p>16 the evidence was presented in a joint -- and I would</p> <p>17 again say collegial way by the parties -- I think</p> <p>18 it's more efficient just to go forward and have</p> <p>19 closing argument tomorrow morning.</p> <p>20 Counsel, we will reconvene at 9:00 a.m.</p> <p>21 tomorrow for closing argument. Then, as I stated to</p> <p>22 the parties yesterday, what I want the closing</p> <p>23 argument to be is Mr. Nork will go first. He'll</p> <p>24 make his entire argument regarding declaratory</p>	<p style="text-align: right;">Page 217</p> <p>1 relief and make the argument regarding contract</p> <p>2 claims.</p> <p>3 Then, Mr. Anderson, you can make your</p> <p>4 entire argument regarding declaratory relief and</p> <p>5 your argument against the contract claims. Then I</p> <p>6 will give Mr. Nork the ability to make a rebuttal</p> <p>7 argument focused only on the contract issues. So,</p> <p>8 he doesn't get an extra bite at the apple regarding</p> <p>9 declaratory relief because both parties are</p> <p>10 plaintiffs in that and so I don't think it's fair</p> <p>11 for one side to get an additional argument.</p> <p>12 I don't know what that does with your</p> <p>13 ability to go to the Santa Fe dinner, Mr. Anderson.</p> <p>14 Possibly you can give your ticket to Mr. Nork and it</p> <p>15 sounds like he's not going. I still hope you're</p> <p>16 able to go. It's a worthwhile event. When I was</p> <p>17 the president of the Washoe County Bar Association</p> <p>18 on the board of directors, we came up with the idea,</p> <p>19 so I'm always a big proponent of people going to the</p> <p>20 Santa Fe dinner. It's not even at the Santa Fe</p> <p>21 anymore but it's still called the "Santa Fe Dinner."</p> <p>22 Hopefully, I have not impacted your ability to</p> <p>23 attend or yours, Mr. Adams. Mr. Nork, no offense if</p> <p>24 you don't go.</p>

<p style="text-align: right;">Page 218</p> <p>1 MR. NORK: Let me apologize in advance for 2 not being there.</p> <p>3 I do have a question, and Mr. Anderson is 4 probably thinking the same thing. Is the Court 5 going to impose time limits on the closings? I know 6 you have a meeting at noon.</p> <p>7 THE COURT: No, I'm not going to impose any 8 limitations. Are you parties familiar with 9 Parkinson's law? It states that -- it's a law of 10 efficiency. It's from England, if I remember 11 correctly, probably the turn of the century.</p> <p>12 But under that law it's the observation 13 that it will take you as long to perform a task as 14 you are given. So, by setting a timeline to do 15 anything, it will take you that long to do it. Put 16 another way, Judge Flanagan told me once when I was 17 still an attorney when I asked a similar question, 18 he said, "Mr. Sattler, attorneys are like gas. They 19 tend to fill any space you allow them to enter." 20 And so I loved him. He was such a wonderful man.</p> <p>21 It just made me laugh because I don't set 22 time limits because I think that encourages people 23 to go as long as I give them. If you can make your 24 argument in ten minutes, make it in ten minutes. If</p>	<p style="text-align: right;">Page 219</p> <p>1 it takes you ten hours and you're using that time 2 wisely, I don't tell you you can't do your argument 3 in that amount of time. I just expect people to 4 use, generally speaking, the jury's time or my time 5 wisely. That's a long way of saying no, there's no 6 time limits regarding your arguments.</p> <p>7 I do have the judges' meeting tomorrow at 8 noon. I will probably break at noon, though I don't 9 have -- I have to make a presentation to my 10 colleagues. We have to discuss something and it's 11 my responsibility to discuss with them. That's the 12 only reason I'm going. I do have the responsibility 13 at the noon hour, so I'll take care of that 14 possibly -- or it might be around 12:30. I'll talk 15 to the court administrator and let her know that I 16 may not be right there at noon when the meeting 17 starts. My concern would be if we don't have a 18 quorum, but as I sit here and think, I think at 19 least eight of the nine of us are in town and so we 20 should have enough people there if we have to vote 21 on anything. I can give my proxy to one of my 22 colleagues.</p> <p>23 MR. NORK: Thank you, your Honor.</p> <p>24 THE COURT: If we do have to take a break</p>
<p style="text-align: right;">Page 220</p> <p>1 for lunch and we come back and we're still talking 2 in the afternoon and the parties are still making 3 closing arguments, I might not be able to give you 4 the ruling on Friday.</p> <p>5 MR. NORK: Understood. Mr. Livadas and Mr. 6 Skarpelos probably would like to be present for 7 that, but they're leaving. So it might be I bring 8 you guys back on Monday.</p> <p>9 THE CLERK: You don't have anything Monday.</p> <p>10 THE COURT: I have a swearing in of a new 11 attorney and so my Monday is totally open. If we 12 don't get done on Friday, I'll bring you back on 13 Monday. I don't want to hold you up on Friday. If 14 you're making the arguments and I think it's prudent 15 to come back, I might just bring you back on Monday 16 to put you on the record.</p> <p>17 MR. NORK: Okay.</p> <p>18 THE COURT: Take the time you need to make 19 an effective argument.</p> <p>20 MR. ANDERSON: One issue I raised with Mr. 21 Nork this morning, the evidence is closed and the 22 exhibits are in evidence. Some of the exhibits had 23 bank information that wasn't redacted and I -- that 24 -- it's in emails and in other communications.</p>	<p style="text-align: right;">Page 221</p> <p>1 I don't know -- now that those documents 2 are in evidence, I don't know that it's appropriate 3 to redact them. I don't know if the Court would 4 entertain some sort of stipulated motion to put 5 those exhibits under seal or otherwise protect them 6 from public view.</p> <p>7 THE COURT: Well, it's interesting that you 8 bring it up. Hold on a second. The motion I had in 9 an unrelated case was a motion to seal the entire 10 record because the parties were concerned about both 11 personal identification information contained in 12 some of the exhibits and then also just the nature 13 of their negotiations themselves. It was a real 14 estate transaction.</p> <p>15 I would direct the parties to the Supreme 16 Court Rule -- let me start again -- the Nevada rules 17 for sealing and redacting court records, SRCR 3, 18 which addresses how you go about sealing the 19 records. You might want to give that a look if 20 there are some things that are appropriate to seal. 21 The preference is to redact, not to seal. So, even 22 if the parties enter into a stipulation, the court 23 just doesn't adopt the stipulation. Under SRCR 3, 24 Subsection 4 it says, "The court may order that</p>

<p style="text-align: right;">Page 222</p> <p>1 court files and records or any part thereof in a 2 civil action to be sealed or redacted provided the 3 court makes and enters written findings that the 4 specific sealing or redaction is justified by 5 identified compelling privacy or safety interests 6 that outweigh the public interest in access to the 7 court record. 8 "The parties' agreement alone does not 9 constitute a sufficient basis for the court to seal 10 or redact court records. The public interest and 11 privacy or safety interest that outweigh the public 12 interest in open court records including findings 13 that the sealing or redaction is permitted or 14 required by federal law." And it looks like there's 15 seven or eight and goes all the way through 16 Subsection H, Reasons why there may be grounds to 17 seal. 18 If you give me -- well, we'll talk about it 19 if the appropriate motion is made, regardless of 20 what happens with the outcome of the case. I 21 strongly favor open access to the court and the 22 court files, so I'm very cherry about how much 23 sealing I'll allow or redaction I'd allow. Strongly 24 encourage redaction.</p>	<p style="text-align: right;">Page 223</p> <p>1 MR. ANDERSON: I'll speak with Mr. Nork. I 2 didn't know if they could be redacted after 3 admittance into evidence. So, I defer to the 4 Court's preference. If that's something that is 5 permitted, then I will speak with Mr. Nork about 6 doing limited redaction just to protect whatever 7 account information is in there from the public view 8 as deemed in the parameters of SRCR 3. 9 THE COURT: In 1955 Parkinson's law on the 10 Pursuit of Progress was published. It is the adage 11 that "work expands so as to fill the time available 12 for its completion." 13 MR. ANDERSON: Sounds true. 14 MR. NORK: I like Judge Flanagan's version. 15 THE COURT: The clerk asked me, Mr. Nork, 16 if she wants to mark -- or she wants the documents 17 that you have created during the testimony of 18 various witnesses to be marked. 19 I believe that the lower two were created 20 during the testimony of Mr. Livadas. The one that's 21 still on the board was created during the testimony 22 of Mr. Pedafronimos. 23 MR. NORK: I may rely upon them tomorrow 24 morning.</p>
<p style="text-align: right;">Page 224</p> <p>1 THE COURT: Okay. So, you can leave them 2 there. Once the argument is over with and the case 3 is concluded, they will be destroyed. They're not 4 exhibits. 5 MR. ANDERSON: May I take a picture of 6 those? I don't have copies. 7 THE COURT: Sure. Anything else, Mr. Nork 8 or Mr. Livadas? 9 MR. NORK: No, your Honor. Thank you for 10 your time. 11 THE COURT: On behalf of Mr. Skarpelos, Mr. 12 Anderson? 13 MR. ANDERSON: No, your Honor. 14 THE COURT: Gentlemen, I will see everyone 15 tomorrow at 9:00. Court is in recess. 16 (Proceedings adjourned at 3:38 p.m.) 17 -o0o- 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 225</p> <p>1 STATE OF NEVADA ) 2 ) SS. 3 COUNTY OF WASHOE ) 4 I, CHRISTINA MARIE AMUNDSON, official reporter 5 of the Second Judicial District Court of the State 6 of Nevada, in and for the County of Washoe, do 7 hereby certify: 8 That as such reporter, I was present in 9 Department No. 10 of the above court on Thursday, 10 January 31, 2019, at the hour of 8:30 a.m. of said 11 day, and I then and there took verbatim stenotype 12 notes of the proceedings had and testimony given 13 therein in the case of NATCO Plaintiff, v. Weiser 14 Management, et al., Defendants, Case CV15-02259. 15 That the foregoing transcript is a true and 16 correct transcript of my said stenotype notes so 17 taken as aforesaid, and is a true and correct 18 statement of the proceedings had and testimony given 19 in the above-entitled action to the best of my 20 knowledge, skill and ability. 21 DATED: At Reno, Nevada, on the 19th day of March 22 2020. 23 /S/ Christina Marie Amundson, CCR #641 24 Christina Marie Amundson, CCR #641</p>

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CASE NO. CV15-02259      **NEVADA AGENCY & TRANSFER CO. VS. WEISER ASSET ETAL**

DATE, JUDGE  
OFFICERS OF

**Pg. 1**

COURT PRESENT

APPEARANCES-HEARING

---

2/1/19  
HONORABLE  
ELLIOTT A.  
SATTLER  
DEPT. NO. 10  
M. Merkouris  
(Clerk)  
T. Amundsen  
(Reporter)

**ONGOING BENCH TRIAL**

9:17 a.m. – Court reconvened.

Jeremy Nork, Esq., and Frank Laforge, Esq., were present on behalf of Cross-Claimants Weiser (Bahamas) Ltd., and Weiser Asset Management, Ltd. Mr. Christos Livadas was present with counsel Nork and Laforge.

Cross-Claimant Anthanasios Skarpelos was present with counsel Dane Anderson, Esq., and Seth Adams, Esq.

**COURT** apologized to the parties for starting late this morning, noting that he was taking care of an unrelated matter.

Counsel Nork presented closing arguments.

10:27 a.m. – Court stood in recess.

10:43 a.m. – Court reconvened.

Counsel Anderson presented closing arguments.

Counsel Nork advised the Court that he does not feel additional closing arguments are necessary.

**COURT ORDERED:** Matter taken under advisement; a Decision Hearing shall be set for February 6, 2019, at 3:00 p.m.

11:47 a.m. – Court adjourned.

## Exhibits

**Title: NEVADA AGENCY & TRANSFER CO. VS. WEISER ASSET ETAL**

**Cross-Claimant: ANTHANASIOS SKARPELOS**

**ATTY: DANE ANDERSON, ESQ.**

**ATTY: SETH ADAMS, ESQ.**

**Cross-Claimant: WEISER (BAHAMAS) LTD., &  
WEISER ASSET MANAGEMENT, LTD.**

**ATTY: JEREMY NORK, ESQ.**

**ATTY: FRANK LAForge, ESQ.**

**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	Skarpelos	Anavex Life Sciences Corp. Share Certificate 0753 for 6,633,332 shares (WEISER000281)	1/24/19	No Obj.	1/28/19
2	Skarpelos	WAM New Account Opening Form (WEISER000352-361)	1/24/19	No Obj.	1/28/19
3	Skarpelos	Letter dated October 30, 2015 from Montello Law Firm to NATCO (WEISER000002-WEISER000003)	1/24/19	No Obj.	1/28/19
4	Weiser	9/24/2007 Anavex physical certificates registered in Athanasios Skarpelos (WEISER000280)	1/24/19	No Obj.	1/28/19
5	Weiser	9/27/2007 Anavex Affiliate Stock Purchase Agreement (WEISER000316-WEISER000319)	1/24/19	Obj; overruled	1/28/19
6	Weiser	10/1/2007 Email between Athanasios Skarpelos & Christos Livadas (WEISER000314)	1/24/19	Obj; overruled	1/28/19
7	Weiser	5/30/2011 Email between Athanasios Skarpelos and Howard Daniels re Courier Address for WAM, Ltd. (S000006)	1/24/19	No Obj.	1/28/19

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**Case No: CV15-02259**

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**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
8	Weiser	5/31/2011 Skarpelos Identity Verification Form with Supporting Documents (WEISER000362-WEISER000367)	1/24/19	No Obj.	1/28/19
9	Weiser	5/31/2011 Certified copy of Pedafronimos Lambros passport (WEISER000473)	1/24/19	No Obj.	1/28/19
10	Weiser	7/06/2012 Email between Christos Livadas and Laurine Luo re Travel Itinerary Athanasios Skarpelos (WEISER000347-WEISER000349)	1/24/19		
11	Weiser	MHNYMA Swift-Single Customer Credit Transfer (WEISER000346)	1/24/19	Obj; overruled	1/31/19
12	Weiser	12/21/2012 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000345)	1/24/19	Obj; overruled	1/31/19
13	Weiser	1/10/2013 Corporate Indemnity to Nevada Agency and Transfer Company to Reissuance of Lost Certificate (S000007)	1/24/19	No Obj.	1/28/19

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**ATTY: FRANK LAFORGE, ESQ.**

**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
14	Weiser	3/28/2013 Athanasios Skarpelos Affidavit for Lost Stock Certificate (S000008-S000009)	1/24/19	No Obj.	1/28/19
15	Weiser	3/29/2013 Athanasios Skarpelos Stop Transfer Order (S000010)	1/24/19	No Obj.	1/28/19
16	Weiser	4/4/2013 NATCO Transfer (S000011)	1/24/19	No Obj.	1/28/19
17	Weiser	4/4/2013 HSBCnet Details (WEISER000465-WEISER000466)	1/24/19		
18	Weiser	4/26/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000338)	1/24/19	Obj; overruled	1/31/19
19	Weiser	5/9/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000312)	1/24/19	Obj; overruled	1/31/19
20	Weiser	5/24/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000340)	1/24/19	No Obj.	1/28/19

## Exhibits

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**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
21	Weiser	06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000012)	1/24/19	No Obj.	1/28/19
22	Weiser	06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000013)	1/24/19	No Obj.	1/28/19
23	Weiser	06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000014)	1/24/19	No Obj.	1/28/19
24	Weiser	06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000015)	1/24/19	No Obj.	1/28/19
25	Weiser	6/24/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000333-000337)	1/24/19	No Obj.	1/28/19
26	Weiser	06/25/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S0000016)	1/24/19	No Obj.	1/28/19

## Exhibits

**Title: NEVADA AGENCY & TRANSFER CO. VS. WEISER ASSET ETAL**

**Cross-Claimant: ANTHANASIOS SKARPELOS**

**ATTY: DANE ANDERSON, ESQ.**  
**ATTY: SETH ADAMS, ESQ.**

**Cross-Claimant: WEISER (BAHAMAS) LTD., &  
WEISER ASSET MANAGEMENT, LTD.**

**ATTY: JEREMY NORK, ESQ.**  
**ATTY: FRANK LAFORGE, ESQ.**

**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
27	Weiser	07/02/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000017)	1/24/19	No Obj.	1/28/19
28	Weiser	07/02/2013 Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000018)	1/24/19	No Obj.	1/28/19
29	Weiser	07/03/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000019)	1/24/19	No Obj.	1/28/19
30	Weiser	07/05/2013 Stock Sale and Purchase Agreement between Weiser and Skarpelos (WEISER000207-WEISER000209)	1/24/19	No Obj.	1/28/19
31	Weiser	07/09/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos (S000020)	1/24/19	No Obj.	1/28/19
32	Weiser	7/9/2013 Blank Stock Sale and Purchase Agreement signed by Skarpelos (WEISER000161-WEISER000163)	1/24/19	No Obj.	1/28/19

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Exhibit No.	Party	Description	Marked	Offered	Admitted
33	Weiser	7/9/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000328-WEISER000332)	1/24/19	No Obj.	1/28/19
34	Weiser	Blank Stock Sale and Purchase Agreement (WEISER000156-WEISER000158)	1/24/19	No Obj.	1/28/19
35	Weiser	7/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/24/19	No Obj.	1/28/19
36	Weiser	7/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000369)	1/24/19	No Obj.	1/28/19
37	Weiser	7/12/2013 HSBCnet Details (WEISER000467-WEISER000468)	1/24/19		
38	Weiser	8/12/2013 HSBCnet Details (WEISER000469-WEISER000470)	1/24/19		
39	Weiser	9/23/2013 HSBCnet Details (WEISER000471-WEISER000472)	1/24/19		
40	Weiser	10/28/2013 email Tom Skarpelos and Christos Livadas (WEISER000339)	1/24/19	No Obj.	1/28/19



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Exhibit No.	Party	Description	Marked	Offered	Admitted
41	Weiser	12/17/2013 Email Nick Boutsalis to Christos Livadas re Stock Certificate (WEISER000168)	1/24/19		
42	Weiser	12/18/2013 Email Nick Boutsalis and Tiffany Erickson at NATCO re transfer shares (WEISER000170-WEISER000172)	1/24/19		
43	Weiser	12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/24/19	Obj; overruled	1/28/19
44	Weiser	Duplicate copy of 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/24/19	Obj; overruled	1/28/19
45	Weiser	Securities Commission of the Bahamas Licenses Under the Securities Industry Act, 2011 (WEISER000417-WEISER000435)	1/24/19		

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**Case No: CV15-02259**

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Exhibit No.	Party	Description	Marked	Offered	Admitted
46	Weiser	11/02/2015 letter Ernesto A. Alvarez to Nevada Agency and Transfer Company Weiser Asset Management Ltd. (WEISER000004)	1/24/19	No Obj.	1/28/19
47	Weiser	11/03/2015 letter Alexander H. Walker III to Ernest A. Alvarez (WEISER000001)	1/24/19	No Obj.	1/28/19
48	Weiser	11/12/2015 letter Elias Sourso, Weikser Asset Management Ltd. to NATCO (WEISER000011)	1/24/19	No Obj.	1/28/19
49	Weiser	11/12/2015 letter Bernard Pinsky to Nevada Agency and Transfer Company. (WEISER000007-WEISER000008)	1/24/19	No Obj.	1/28/19
50	Weiser	11/12/2015 email Christos Livadas to Nick Boutsalis (WEISER000214-WEISER000215)	1/24/19	No Obj.	1/28/19
51	Weiser	11/13/2015 letter Ernesto A. Alvarez to Alexander Walker III, Esq. (WEISER000009)	1/24/19	No Obj.	1/28/19
52	Weiser	11/13/2015 letter Ernesto A. Alvarez to Nevada Agency and Transfer Company (WEISER000005)	1/24/19	No Obj.	1/28/19

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**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
53	Weiser	11/13/2015 email Alexander H. Walker III to Ernest A. Alvarez cc Amanda Cardinalli (WEISER000187-WEISER000189)	1/24/19	No Obj.	1/28/19
54	Weiser	11/13/2015 letter Nick Boutsalis to NATCO (PID-00045-PID-00048)	1/24/19	No Obj.	1/28/19
55	Weiser	11/16/2015 letter Ernesto A. Alvarez to Alexander Walker III, Esq. (WEISER000012)	1/24/19	No Obj.	1/28/19
56	Weiser	11/17/2015 email Bill Simonitsch to Louis R. Montello cc Ernesto Alvarez (WEISER000238)	1/24/19	No Obj.	1/28/19
57	Weiser	11/18/2015 email Bill Simonitsch and Ernest A. Alvarez (WEISER000216-WEISER000217)	1/24/19	No Obj.	1/28/19
58	Weiser	11/19/2015 email Bill Simonitsch and Ernest A. Alvarez cc Louis Montello (WEISER000218-WEISER000219)	1/24/19	No Obj.	1/28/19
59	Weiser	11/19/2015 email Christos Livadas re Tom Transfer request (WEISER000320-WEISER000322)	1/24/19	Obj; overruled	1/28/19

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**Case No: CV15-02259**

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**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
60	Weiser	11/19/2015 email Christos Livadas re Skarpelos Email flow 2011-2013 (WEISER000341-WEISER000343)	1/24/19	Obj; overruled	1/28/19
61	Weiser	Bank documents (S000032-(S000035)	1/24/19	Obj; overruled	1/30/19
62	Weiser	Weiser Asset Management Account Agreement Terms and Conditions (WEISER000437-WEISER000443)	1/24/19		
63	Weiser	United States Securities and Exchange Commission Form S-1 for Anavex Life Sciences Corp.	1/30/19		
64	Weiser	United States Securities and Exchange Commission Form 10-Q for Anavex Life Sciences Corp.	1/30/19		
65	Weiser	United States Securities and Exchange Commission – Statement of Changes in Beneficial Ownership	1/30/19		
66	Weiser	United States Securities and Exchange Commission – Statement of Changes in Beneficial Ownership	1/30/19		

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**ATTY: FRANK LAForge, ESQ.**

**Case No: CV15-02259**

**Dept. No: 10 Clerk: M. MERKOURIS**

**Date: 1/28/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
67	Weiser	United States Securities and Exchange Commission – Statement of Changes in Beneficial Ownership	1/30/19		
Non-Evidence		Deposition of Christos Livadas, dated October 23, 2018; opened and published on January 28, 2019.			
Non-Evidence		Deposition of Athanasios Skarpelos, dated October 24, 2018; opened and published on January 30, 2019.			
Non-Evidence		Deposition of Lambros Pedafronimos, dated October 23, 2018; opened and published on January 31, 2019.			



<p>Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR WEISER ASSET MANAGEMENT, LTD.</p> <p>4 HOLLAND &amp; HART</p> <p>5 BY: JEREMY NORK, ATTORNEY AT LAW</p> <p>6 5411 Kietzke Lane, Suite 200</p> <p>7 Reno, NV 89511</p> <p>8 775.327.3043</p> <p>9</p> <p>10 FOR ATHANASIOS SKARPELOS:</p> <p>11 WOODBURN AND WEDGE</p> <p>12 BY: DANE ANDERSON, ATTORNEY AT LAW</p> <p>13 SETH ADAMS, ATTORNEY AT LAW</p> <p>14 6100 Neil Road, Suite 500</p> <p>15 Reno, NV 89505</p> <p>16 775.688.3000,</p> <p>17 -o0o-</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 PAGE</p> <p>4 Closing argument by Mr. Nork 7</p> <p>5 Closing argument by Mr. Anderson 52</p> <p>6 -o0o-</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 4</p> <p>1 Reno, Nevada - February 1, 2019 - 9:17 a.m.</p> <p>2 THE COURT: We'll go back on the record</p> <p>3 now. Mr. Nork, Mr. LaForge, and Mr. Livadas are</p> <p>4 present on behalf of the Weiser entities.</p> <p>5 Good morning, gentlemen.</p> <p>6 Mr. Anderson, Mr. Skarpelos, and Mr. Adams</p> <p>7 are here on behalf of Mr. Skarpelos. This is the</p> <p>8 time set for closing arguments.</p> <p>9 Counsel, the first thing I want to do is</p> <p>10 offer my apology to all six of you. I said we would</p> <p>11 start at 9:00, and it's 9:15. I had to resolve an</p> <p>12 issue that has nothing to do with your case. But I</p> <p>13 was trying to resolve it remotely from my house this</p> <p>14 morning and then I had to come in and look at</p> <p>15 something in the office.</p> <p>16 As I walked in this morning, I saw Mr. Nork</p> <p>17 and Mr. Livadas and I apologized to them, but I want</p> <p>18 to apologize to everybody. I think it's incredibly</p> <p>19 disrespectful that judges just assume that things</p> <p>20 start when they appear. I think it's important that</p> <p>21 if I say we start on time, I expect that I start on</p> <p>22 time as well. So, I apologize to all of you for</p> <p>23 starting late.</p> <p>24 Let's see. We are going to do closing</p>	<p>Page 5</p> <p>1 arguments this morning. Mr. Nork asked last night</p> <p>2 how long we would have or if there were time limits.</p> <p>3 There are no time limits on your closing arguments,</p> <p>4 so we will just begin. I will take a break after</p> <p>5 Mr. Nork's closing argument. We'll see where we</p> <p>6 are.</p> <p>7 I spoke to some of my colleagues including</p> <p>8 the chief judge yesterday at Sante Fe dinner, where</p> <p>9 I saw Mr. Adams and I saw Mr. Anderson walking in.</p> <p>10 Mr. Nork, you were notoriously absent. You were the</p> <p>11 topic of conversation for the entire Washoe County</p> <p>12 bar. Where is Jeremy Nork?</p> <p>13 I do have to go to the meeting. There's a</p> <p>14 couple things to discuss that require my presence.</p> <p>15 There are a couple of votes that I have to make, and</p> <p>16 so I do have to break at noon to go to the judges'</p> <p>17 meeting. If I didn't have to do that, we would just</p> <p>18 keep working to get it done. But speaking to the</p> <p>19 chief in particular, I have to be there at that</p> <p>20 meeting at noon.</p> <p>21 So, we'll just see where we are and we'll</p> <p>22 take a break. After Mr. Nork's closing argument,</p> <p>23 I'll hear from Mr. Anderson. Mr. Anderson, I don't</p> <p>24 know how long your closing argument will be and I</p>

<p style="text-align: right;">Page 6</p> <p>1 don't know how long Mr. Nork's closing argument will 2 be.</p> <p>3           So, if it looks like we're getting close to 4 noon, let's say we end at, like, 11:30, I'm not 5 going to expect you to start your closing argument 6 if it's going to be longer than a half hour. We'll 7 come back after lunch and recommence with the 8 closing arguments. So, with that, enough talk.</p> <p>9           Mr. Nork.</p> <p>10          MR. NORK: Thank you, your Honor.</p> <p>11          THE COURT: Also, I'll tell the parties 12 this: The most difficult part of a bench trial for 13 me personally is that I don't ask any questions 14 during the closing argument. As everybody knows 15 about me now as six years on the bench, I ask tons 16 of questions and I -- I think it's important to ask 17 questions when I think an issue has come up.</p> <p>18          Closings arguments in bench trials are the 19 one time I sit quietly and ask nothing, because I 20 think it's unfair to one side or the other to 21 interject into the closing argument. And I also 22 realize that I'm the finder of fact so I always look 23 at it as what juries don't get to say. Well, hold 24 on a second, what about this question that I have a</p>	<p style="text-align: right;">Page 7</p> <p>1 burning interest in. So, I'll just let you both 2 know that I will sit passively but attentively and 3 listen to your closing arguments.</p> <p>4           With that, Mr. Nork.</p> <p>5           CLOSING ARGUMENT</p> <p>6          MR. NORK: For the record, Jeremy Nork on 7 behalf of Defendants and Crossclaimants, Weiser 8 Asset Management. and Weiser Capital.</p> <p>9          Let me start by following up on what your 10 Honor's comment just was. I would like to thank you 11 on behalf myself, Mr. LaForge, and especially my 12 client, Christos Livadas, for not only the 13 attentiveness over the past week, but sometimes your 14 active participation. It is refreshing, it's 15 encouraging, and we appreciate it very much, so 16 thank you very much, your Honor.</p> <p>17          As I mentioned in my opening statement, 18 this is an interpleader action and we're sitting in 19 a court of equity. One of the interesting things 20 about sitting in a court of equity is that this 21 court has the ability to fashion any remedy it sees 22 fit. The other interesting aspect of sitting in an 23 interpleader action is that no cross-claim is really 24 needed. The interpled defendants by virtue of being</p>
<p style="text-align: right;">Page 8</p> <p>1 interpled defendants effectively become plaintiffs 2 without having to assert any affirmative claims.</p> <p>3          As I mentioned in my trial statement, there 4 was some case law in Nevada concerning interpleader 5 actions. The first I'd like to point out is Balish 6 v. Farnham 546 P2d., 1297. It is a 1976 Nevada 7 case. In that case the court explained, 8 "Interpleader is an equitable proceeding to 9 determine the rights of rival claimants to property 10 held by third persons having no interest therein." 11 The court continued on page 1300, "In such a 12 proceeding each claimant is treated as a plaintiff 13 and must recover on the strength of his own right, 14 or title and not upon the weakness of his 15 adversaries. Consequently, the failure of one 16 claimant to prove his claim does not mean that the 17 other claimant automatically wins." In the Balish 18 case there were no crossclaims or counterclaims by 19 the interpleading defendants. They were simply 20 named and then, as a result of being named as 21 interpled defendants, they were -- they were 22 considered plaintiffs.</p> <p>23          The other interesting conclusion that can 24 be drawn from the Balish case is explained in more</p>	<p style="text-align: right;">Page 9</p> <p>1 detail in a case outside the Nevada jurisdiction, 2 Midland Insurance v. Friedgood, a 1984 case, 3 citation in New York, 577 F Sup 1407. In the 4 Midland case the court explained that, even if all 5 of the interpled defendants but one are dismissed, 6 that one remaining interpled defendant still has to 7 prove the defendant's case.</p> <p>8          The court explained, "Thus, while the 9 claims of interpled defendants may be disposed of on 10 summary judgment in appropriate cases, the dismissal 11 of all claims but one does not entitle the remaining 12 claimant to judgment. The burden on the sole 13 remaining claim is unchanged by the elimination of 14 all other claims. The claimant must still meet the 15 standard of proof applicable when there are several 16 claims."</p> <p>17          The more interesting holding in the Midland 18 case isn't that kind of academically interesting 19 point but, rather, has to do with the burden of 20 proof. The court explained, "In an interpleader 21 action each claimant must succeed in establishing 22 his right to the property by a preponderance of the 23 evidence." We get to go back to the State of Nevada 24 to find out what preponderance of the evidence is</p>



<p style="text-align: right;">Page 10</p> <p>1 and that's in the McClanahan v. Raley's case, which  2 is 34 P.3d 573. It's a 2001 case. And court held,  3 "Preponderance of the evidence merely refers to the  4 greater weight of the evidence." And as all the  5 attorneys and the Court is well aware, greater  6 weight of the evidence doesn't mean greater number  7 of exhibits or greater number of witnesses. Rather,  8 it's greater weight.</p> <p>9 But what's interesting about that is  10 greater weight simply means 51 percent more likely  11 versus 49 percent. And in this particular case, if  12 it is 51 percent more likely that the April sale  13 occurred, the Court must find in favor of the Weiser  14 defendants. If it's 51 percent more likely that  15 money was deposited into Mr. Skarpelos' W.A.M.  16 account, this Court must find in favor of the Weiser  17 defendants. If it's 51 percent more likely that  18 money was withdrawn, which further evidences the  19 opening and use of the W.A.M. account, this Court  20 must find in favor of the Weiser defendants.</p> <p>21 Now, although I began my presentation by  22 pointing out that crossclaims and counterclaims are  23 not required in an interpleader action, they are  24 nevertheless -- they have nevertheless been made in</p>	<p style="text-align: right;">Page 11</p> <p>1 this case. My client has asserted three  2 crossclaims, one for declaratory judgment, one for  3 breach of contract, and one for breach of the  4 Covenant of Good Faith and Fair Dealing. In my  5 trial statement I cite to the essential elements of  6 all three claims for relief, for declaratory  7 judgment, the case cited Crest v. Corey, 189, P.2d  8 352, a 1948 case.</p> <p>9 For breach of contract I cite to Saini v.  10 International Game Technology, a District of Nevada  11 case, Federal 434 F Supp 2d, 913, a 2006 case.</p> <p>12 And then, finally, for breach of the  13 covenant I cite to Branch Banking &amp; Trust Company v.  14 Westar, which is a District of Nevada case 2017.  15 There's a Westlaw cite 2017, Westlaw 1179942. And  16 in that case the court cites to Hilton Hotels v.  17 Butch Lewis Production, a Nevada case, 808 P.2d,  18 919.</p> <p>19 In addition to those cases, I also  20 referenced yesterday -- and to make the record  21 complete I'll reference again today -- other cases  22 that shed light on analyzing a breach of contract  23 claim. Specifically, I referenced yesterday and  24 will reference today the Certified Fire Protection</p>
<p style="text-align: right;">Page 12</p> <p>1 case v. Precision Construction case. That is a  2 Nevada case, 283 P. 3d, 250, 2012 Nevada case. And  3 in that case the court explained as follows: "Basic  4 contract principles require for an enforceable  5 contract and offer and acceptance, meeting of the  6 minds, and consideration. A meeting of the minds  7 exist when the parties agreed upon the contract's  8 essential terms. Which terms are essential depends  9 on the agreement and its context and also on the  10 subsequent conduct of the parties including dispute  11 which arises in the remedy sought."</p> <p>12 I also referenced yesterday but will  13 confirm today that a contract does not need to be in  14 writing. It can be oral, and I cite that in my  15 trial statement, the Stanley v. a Levy company case.  16 That's 112 P.2d, 1047. It's a 1941 case.</p> <p>17 And, finally, a contract can also be an  18 implied contract. And in support of that provision,  19 I cite to Smith v. Recrion, which is 541 P.2d, 663.  20 It's a 1975 case. The court explained in that  21 matter, "The terms of an express contract are stated  22 in words while those in an implied contract are  23 manifested by conduct."</p> <p>24 In addition to the case law explaining the</p>	<p style="text-align: right;">Page 13</p> <p>1 elements and how to analyze the claims for the  2 claims in the crossclaim asserted by the Weiser  3 defendants, there is also an issue that has arisen  4 regarding the allegations in the cross -- the  5 specific allegations. In response to that I would  6 begin by pointing the Court's attention to the case  7 of Crucil v. Carson City. It's a Nevada case, 600  8 P.2d 216. It's a 1979 case. And in that case the  9 court explained the general rule that is well  10 accepted in Nevada, "The pleading of conclusions  11 either of law or fact is sufficient so long as the  12 pleading is fair notice of the nature and basis of  13 the claim."</p> <p>14 And that concept of the ability of a party  15 to simply claim -- plead conclusions and that those  16 conclusions are sufficient to satisfy Rule 8 of the  17 Nevada Rules of Civil Procedure also find support in  18 other jurisdictions. Specifically in Georgia  19 there's the case of Forest v. Williams, which is 740  20 Southeast 2.d, 297, and in that case the court held  21 "Under this notice theory of the pleading, it is  22 immaterial whether a pleading states conclusions or  23 facts, as long as fair notice is given."</p> <p>24 And that same conclusion is reached in</p>

<p style="text-align: right;">Page 14</p> <p>1 Indiana, which is Hansford v. Maplewood Station, 621  2 N.E. 2d, 347, a 1993 case. "The court similarly  3 holds it is immaterial whether a pleading states  4 factors or conclusions so long as fair notice is  5 given." And then, perhaps, the best example of that  6 concept of Nevada being a notice pleading state and  7 that pleadings are liberally construed, which is  8 universally held, could be found in an Alabama case,  9 Diemert v. City of Mobile. That is 474 S. 2d 663,  10 1985. In that case it's a wrongful death claim  11 brought against a municipal corporation. And the  12 statute under which a wrongful death claim must be  13 brought in Alabama requires that -- it says, "No  14 recovery shall be had against any city or town on a  15 claim for personal injury received unless a sworn  16 statement be filed with the clerk by the party  17 injured or his personal representative in case of  18 his death stating substantially the manner in which  19 the injury was received, the day and time and the  20 place where the accident occurred, and the damages  21 claimed."  22 Well, in that case the claimant stated the  23 wrong date as to when the injury was, despite the  24 requirement in the statute. And the court held in</p>	<p style="text-align: right;">Page 15</p> <p>1 light of its liberal notice pleading requirements it  2 was immaterial. The court said it did not prevent  3 the defendant from knowledge of the pending action  4 against it.  5 And indeed all of those cases kind of lead  6 to the same conclusion, which is it makes no sense  7 to punish a party or to hold a party to a higher  8 standard if that party is attempting to plead more  9 than simply facts or conclusions. There is no  10 authority and I could not find any authority to  11 suggest that a party making more specific claims in  12 its complaint somehow comes outside of the liberal  13 notice pleading requirements of Rule 8.  14 The point of all of that is, your Honor,  15 the date asserted in the crossclaim -- the date of  16 the asserted contract in the crossclaim is  17 immaterial because the parties have known about the  18 April 2013 transaction since the account statements  19 were produced back in 2016, since Mr. Livadas filed  20 his declaration in April of last year and certainly  21 since Mr. Livadas was deposed in October of last  22 year.  23 So, with the case law in mind, it's now  24 appropriate to focus on the only transaction that</p>
<p style="text-align: right;">Page 16</p> <p>1 matters in this case, and that's the transaction  2 between Mr. Skarpelos and Weiser Asset Management in  3 April 2013 for the acquisition of 3.3 million shares  4 of stock at \$250,000. For the purpose of this  5 lawsuit, your Honor, it does not matter what the  6 trading value was of the stock at the time, who the  7 ultimate buyers may have been intended to be, what  8 W.A.M. had to do to cover when it didn't get the  9 stock. It didn't matter, your Honor, what W.A.M.  10 was going to do with the stock.  11 For the purposes of this lawsuit, W.A.M.  12 could have kept it, could have transferred it, could  13 have taken Certificate 753, doused it with gasoline  14 and lit it on fire. It doesn't matter. All that  15 matters is there was an agreement between those two  16 parties. And how do we know that W.A.M. performed?  17 Well, we know that certainly from the testimony of  18 Mr. Livadas. But we also know from other evidence.  19 We know that Mr. Pedafronimos, who at times is  20 characterized as Mr. Skarpelos' assistant and at  21 other times not, but certainly was involved in  22 communicating between Mr. Skarpelos and Mr. Livadas.  23 He testified that he was instructed by Mr.  24 Skarpelos and then advised Mr. Livadas in March of</p>	<p style="text-align: right;">Page 17</p> <p>1 2013 to try to sell some or all of Mr. Skarpelos'  2 position. We know Mr. Skarpelos admitted in that  3 time frame that he was wanting to sell his stock.  4 We know that Mr. Skarpelos deposited his original  5 stock certificates, and not only his original stock  6 certificates, your Honor, but the only stock he  7 owned in Anavex he deposited with W.A.M.  8 We know that it's further support of  9 evidence demonstrating that W.A.M. performed  10 pursuant to the April 2013 transaction. We know  11 from Mr. Lambros Pedafronimos' testimony. I put it  12 on the board because I felt it was so important.  13 Mr. Pedafronimos said that he spoke with Mr. Livadas  14 in October of 2013 and the message that was relayed  15 from Mr. Livadas to Mr. Pedafronimos was, "There's  16 red flags going up on the transfer agent."  17 There is no other explanation for why Mr.  18 Livadas would be in touch with the transfer agent in  19 October of 2013 but for the effort to dematerialize  20 Stock Certificate 753 that was acquired six months  21 earlier in April 2013. There is -- has been no  22 evidence and will be no evidence presented to  23 suggest otherwise.  24 And then the best indication to evidence</p>

<p style="text-align: right;">Page 18</p> <p>1 that W.A.M. -- that there was an agreement and that  2 W.A.M. performed under that agreement was Exhibit  3 44, which is the account statement. You heard the  4 testimony of Mr. Livadas as to his belief in the  5 accuracy of that document. You heard the testimony  6 of how he acquired that document, that it was one of  7 a number of hard copies of documents provided to him  8 when he acquired Weiser Asset Management. Said  9 there were similar 2013 account statements for all  10 customers of W.A.M.</p> <p>11 You heard the testimony of Mr. Livadas that  12 he had never been advised by any auditor that there  13 were any discrepancies regarding any prior  14 accountings of W.A.M.'s records and you heard the  15 testimony of Mr. Livadas that he had undertaken  16 efforts to independently verify the content of  17 Exhibit 44. And Exhibit 44 is further supported by  18 other documents. You've got Exhibit 2, which is the  19 account opening form that was completed by Mr.  20 Skarpelos. You've got Exhibit 8, which is what has  21 been described as the Know Your Customer form, which  22 was also admittedly completed by Mr. Skarpelos.</p> <p>23 You've got the admission by Mr. Skarpelos  24 that he deposited his original and only stock</p>	<p style="text-align: right;">Page 19</p> <p>1 certificates in Anavex pursuant to opening an  2 account with W.A.M. You also have the testimony of  3 Mr. Skarpelos and Mr. Pedafonimos that efforts  4 continued even after May of 2011 to open that  5 account, specifically by providing additional  6 information to complete the Know Your Customer form,  7 which is the utility bill that was provided some two  8 months later.</p> <p>9 In short, your Honor, either Exhibit 44 is  10 evidence of an account and of deposits and  11 withdrawals from that account at Weiser Asset  12 Management or we have stumbled upon the most  13 coincidental banking event in history. Those are  14 the two only two conclusions that can be reached.</p> <p>15 In order to believe the story from Mr.  16 Skarpelos that no account was ever opened and that  17 no money was ever withdrawn from that account, you  18 must believe that Exhibit 44 was created out of thin  19 air. Not only that, your Honor, you must believe  20 that Weiser Asset Management had illegally accessed,  21 not only the bank records of Mr. Pedafonimos and  22 his alleged bank account at Vermont, but also that  23 W.A.M. had illegally accessed Vermont's bank  24 records at HSBC. Because as borne out by the</p>
<p style="text-align: right;">Page 20</p> <p>1 testimony of Mr. Pedafonimos, Exhibit 44, almost  2 every withdrawal in Exhibit 44 lines up with either  3 testimony of a withdrawal or evidence of a  4 withdrawal.</p> <p>5 As I mentioned, this is either the most  6 amazing coincidence in banking history or Exhibit 44  7 is evidence of an account. As early as March of  8 2013 and I put this on the board because I felt it  9 was very important. Exhibit 44 evidences a 10,000  10 euro transaction and Mr. Pedafonimos also testified  11 that about that time frame he believed there was a  12 transaction of 10,000 euros coming out of his  13 Vermont account.</p> <p>14 Exhibit 44 evidences the stock sale in or  15 about April of 2013, which matches up perfectly with  16 the testimony of Mr. Pedafonimos about six months  17 later that stock sale being an effort being  18 undertaken by Mr. Livadas to convert that stock  19 certificate into electronic stock.</p> <p>20 You've got Exhibit 19 admitted into  21 evidence, which is an email from Mr. Pedafonimos to  22 Mr. Livadas on exactly the same date listed in  23 Exhibit 44, May 9th, 2013, enclosing bank  24 information. You've got Exhibit 18 and Exhibit 59,</p>	<p style="text-align: right;">Page 21</p> <p>1 both of which relate to a transaction of 20,000 U.S.  2 dollars, not euros. That's the only entry in  3 Exhibit 44 for U.S. dollars, and it matches up with  4 the timing of Exhibit 18 and Exhibit 59.</p> <p>5 You've got the testimony of  6 Mr. Pedafonimos that he had a July transaction out  7 of his alleged Vermont account for 15,000 euros and  8 certainly that matches up with Exhibit 44. You have  9 his testimony in August of 2013 of another 15,000  10 euros and that matches up with Exhibit 44. And then  11 you've got the testimony of Mr. Pedafonimos in  12 September of 2013 for 7,500 euros and that matches  13 up with Exhibit 44.</p> <p>14 It is also interesting that that  15 transaction, the 7,500 euros, is significantly less  16 than any other transaction Mr. Pedafonimos  17 testified to and the only logical explanation or,  18 rather, a logical explanation that can be concluded  19 in looking at Exhibit 44, is that the reason it was  20 7,500 euros is because there wasn't enough money in  21 the account in September 2013 to cover what he was  22 typically withdrawing, which is 15,000 euros.</p> <p>23 Again, the burden of proof is 51 percent  24 versus 49 percent, and I would argue that the</p>

<p style="text-align: right;">Page 22</p> <p>1 conduct of the parties and the other evidence,  2 testimonial and documentary evidence, supports the  3 accuracy of Exhibit 44 in that it evidences an  4 account opening, that it evidences money being  5 deposited into that account, and it evidences money  6 being taken out of that account.</p> <p>7 Now, there has been a lot of discussion  8 about the difference between W.A.M. and Weiser  9 Capital. I will start by addressing that issue as  10 follows: In the motion for summary judgment filed  11 by the Weiser defendants in April of 2018, there are  12 statements regarding W.A.M. and Weiser. In fact,  13 paragraph 13 to the declaration of Mr. Livadas that  14 was filed in support of that, which has been read  15 into the record a number of times, it's important to  16 take a look at that entire allegation because it  17 mentions both W.A.M. and Weiser Capital.</p> <p>18 It says, "In April 2013 Skarpelos sold  19 3,316,666 shares of the Anavex shares he had  20 deposited with W.A.M. in 2011 to Weiser Capital in  21 exchange for \$250,000 minus a \$420 processing fee,  22 which I helped arrange. This is evidenced by his  23 W.A.M. account statement for 2013, which shows that  24 Skarpelos received \$249,580 in his W.A.M. account as</p>	<p style="text-align: right;">Page 23</p> <p>1 part of the stock sale."</p> <p>2 It is also interesting to point out that,  3 not only have the parties and the attorneys been  4 sometimes mistakenly interchanging "W.A.M." and  5 "Weiser," but that took place in the deposition as  6 well. In the deposition of Mr. Livadas at page 13  7 an effort was made to clarify which party was being  8 referred to. And the question and answer went like  9 this: "Question: Okay. For purposes of referring  10 simply to the entities today, I might refer to  11 W.A.M. by its full name or use the acronym 'W.A.M.'  12 Is that something you're familiar with?"</p> <p>13 "Answer: Yes.</p> <p>14 "Question: And Weiser Bahamas Limited I  15 might call 'Bahamas' or 'Weiser Capital,' I've  16 sometimes seen it called. Is either of those --</p> <p>17 "Answer: I think if you refer to it  18 'Weiser Capital,' it will keep it most clear for  19 me." That's Mr. Livadas' testimony.</p> <p>20 Mr. Livadas testified at trial that there's  21 yet a third Weiser entity, Weiser Holding. He  22 testified that there was sometimes confusion when  23 the Weiser name is used, and that, in fact, happens  24 on the very page that counsel for Mr. Skarpelos has</p>
<p style="text-align: right;">Page 24</p> <p>1 focused on as claiming to evidence that the  2 testimony is limited to Weiser Capital.  3 Specifically on page 201 of Mr. Livadas' deposition  4 -- actually, starts on page 200. The question is:  5 "Okay. As I understand what you just said, the  6 owner of the stock is somebody other than Weiser  7 Capital.</p> <p>8 "Answer: Correct. Because he provided a  9 trade order to sell.</p> <p>10 Actually. let me go back. I'm sorry. Page  11 199. "Question: So, pursuant to Exhibit 25, the  12 owner of the stock is Weiser capital.</p> <p>13 "Answer: Pursuant to the agreement."</p> <p>14 On page 201 the question is this:  15 "Question: This document indicates that  16 Skarpelos is selling the stock to Weiser and you're  17 saying it's an intermediary.</p> <p>18 "Answer: Right.</p> <p>19 "Question: And that Weiser will ultimately  20 do something else with the stock.</p> <p>21 "Answer: Right.</p> <p>22 "Question: When did Weiser cease to become  23 the owner of the stock?</p> <p>24 "Answer: Weiser would have ceased to</p>	<p style="text-align: right;">Page 25</p> <p>1 become the owner when" -- and then I interjected an  2 objection. And then the witness continues, "Weiser  3 ceases to be the owner of the stock immediately  4 because it's a intermediary, it's a pass-through."</p> <p>5 So, we have a dialogue between Mr. Livadas  6 and counsel for Mr. Skarpelos when they're referring  7 to an entity as "Weiser," not "W.A.M.", as was  8 discussed at the outset of the deposition, and not  9 Weiser Capital, as was discussed at the outset of  10 the deposition.</p> <p>11 My point is this, your Honor. There is  12 confusion regarding the names and the entities. But  13 -- and part of that confusion comes from the way the  14 names are used interchangeably and part of that  15 confusion comes from the nature of the transaction.  16 And I attempted to clarify it by drawing my diagram  17 on one of the boards where I described the  18 transaction. But Mr. Livadas also testified in the  19 trial this week that the liabilities are often  20 allocated between W.A.M. and Weiser Capital and that  21 the liabilities change over time to Weiser Capital  22 and W.A.M.</p> <p>23 He testified that Weiser Capital acts as an  24 intermediary between W.A.M. and the seller and</p>

<p style="text-align: right;">Page 26</p> <p>1 between W.A.M. and the buyer. And as an  2 intermediary Weiser testified that Weiser Capital is  3 not acting as an escrow agent but, rather, as an  4 intermediary actually becomes an owner if only  5 temporarily. He testified that the broker buys on a  6 client's behalf and, as such, becomes an owner if  7 only temporarily. But on questioning from this  8 court, Mr. Livadas was asked, "I understand the  9 liabilities may have changed back and forth, but  10 today who are you claiming should be entitled to the  11 stock," and the answer was "W.A.M.", and the  12 preponderance of the evidence supports that  13 conclusion.</p> <p>14 So, the question may be raised, What's the  15 point of any evidence that was presented after the  16 date of September 2013? Well, it does two things.  17 One, it goes to the credibility of parties -- and  18 I'll cover that later -- but, two, it also shows the  19 parties' conduct. Exhibit 30 was referenced as an  20 important document at the outset of this case and it  21 is important. It's important for a couple reasons.  22 One, it's important because it confirms a desire to  23 sell by Mr. Skarpelos. I don't think there's any  24 issue that there was in 2013 a desire to sell some</p>	<p style="text-align: right;">Page 27</p> <p>1 or all of his position.</p> <p>2 It's important because it calls into  3 question the explanation by Mr. Pedafronimos and Mr.  4 Skarpelos as to the nature of the stock sale to  5 these purported Chinese buyers. And what I mean by  6 that, your Honor, is that it was described by them  7 that these Chinese investors were important because  8 they were going to be investors in Anavex as well as  9 stock purchasers, but nowhere in the Stock Sale and  10 Purchase Agreement or acknowledgment that whoever  11 the buyer was going to be was going to also be an  12 investor in Anavex.</p> <p>13 But, thirdly, and perhaps most importantly,  14 this Exhibit 30 is important for the purposes that  15 Mr. Livadas described. He said it memorializes or  16 summarizes or describes the April 2013 transaction  17 and that he completed it and he put it in his file  18 for purposes of being able to show someone if an  19 issue ever came up for anti-money laundering  20 purposes. And, indeed, this piece of paper does in  21 many respects memorialize or summarize or describe  22 the April 2013 transaction in three important ways.</p> <p>23 One, it says there was a seller of stock,  24 Mr. Skarpelos; two, it says how much the stock was.</p>
<p style="text-align: right;">Page 28</p> <p>1 3.3 million shares; and, three, it shows how much  2 the purchase price was, \$250,000. In that respect  3 it does summarize the salient elements of the  4 April 2013 transaction, but there is no suggestion  5 that this was necessary to effectuate that  6 transaction or that it does anything else other than  7 summarizing it.</p> <p>8 It is also notable that Exhibit 30 is  9 different than Exhibit 35, which is the power of  10 attorney. The power of attorney as shown in Exhibit  11 27 and Exhibit 29 was sent separately from  12 Mr. Pedafronimos to Mr. Livadas. It was considered  13 separate. The reason it was considered separate, as  14 explained by Mr. Livadas, is because it was  15 necessary to effectuate the April 2013 transaction.  16 Even if the sale to the Chinese buyers fell through,  17 it would still be necessary to effectuate the  18 April 2013 transaction.</p> <p>19 That's where the testimony of Mr. Walker  20 comes in handy. He addressed three things that are,  21 I think, notable. One, Mr. Walker explained that a  22 blank power of attorney such as Exhibit 36, they get  23 those all the time. He calls them a generally  24 endorsed power of attorney. Second, Mr. Walker</p>	<p style="text-align: right;">Page 29</p> <p>1 testified that the fact that this was a notary in  2 Greek does not on its face invalidate the power of  3 attorney. Certainly it's preferred that there's a  4 medallion guarantee with special ink but he didn't  5 say on its face it's invalid. He just said that  6 there was going to have to be additional inquiry  7 after he received it to confirm whether or not this  8 power of attorney is valid. And he further  9 explained that there was never an opportunity to  10 conduct that additional inquiry because by then he  11 had already learned of an adverse claim by Mr.  12 Skarpelos.</p> <p>13 And then finally Mr. Walker in support of,  14 really, Mr. Livadas' testimony, he explained that  15 broker dealers often hold stock for the benefit of  16 the clients. It goes into the name of the broker  17 dealer but it's for the benefit of their clients.</p> <p>18 Additional evidence that supports the  19 conduct of the parties and that further demonstrates  20 there was an April 2013 transaction and that further  21 supports the accuracy of Exhibit 44, that can be  22 found in Exhibit 6, which is an email from Mr.  23 Skarpelos to Mr. Livadas where he's asking for \$1.6  24 million to be sent into a company he's never heard</p>

<p style="text-align: right;">Page 30</p> <p>1 of called "Casad." Exhibits 12 and 11 are emails  2 from Mr. Pedafronimos to Mr. Livadas asking for  3 money again to be sent to an account holder, not  4 Mr. Pedafronimos but, rather, his sister.  5 Exhibit 18 is yet another email from  6 Mr. Pedafronimos asking Mr. Livadas to send money,  7 this time not to his sister, but to his father  8 Nikolaos. By the way, Exhibit 59 continues that  9 dialogue because it shows that Mr. Livadas received  10 that email and Mr. Livadas immediately instructed  11 Rainbow at Weiser Asset Management to transfer  12 20,000 dollars as soon as possible due to the health  13 of Mr. Skarpelos and his need to pay for his  14 hospital stay.  15 And then also you have Exhibit 19, which is  16 yet another request from Mr. Pedafronimos asking for  17 money to be sent, not to himself, not to his sister  18 or Casad, but Nikolaos Pedafronimos, again, his  19 father. Other documents that show further support  20 of the April 2013 transaction and the accuracy of  21 Exhibit 44 can be found in Exhibit 48. This is a  22 letter from Weiser to NATCO enclosing the --  23 referencing the original stock certificate and  24 asking that the legend be removed so it would be</p>	<p style="text-align: right;">Page 31</p> <p>1 converted to electronic form. Exhibit 50 is further  2 correspondence, this time between Mr. Livadas and  3 Nick Boutsalis, trying to communicate with the  4 transfer agent, trying to get the stock  5 dematerialized. And Exhibit 54 is the letter from  6 Mr. Boutsalis at Primoris Group sent to NATCO again  7 trying to get the Stock Certificate 753  8 dematerialized.  9 All of those documents are in furtherance  10 of having the stock that was sold in April 2013  11 converted to electronic form. So, they offer  12 further support, not only the transaction back in  13 April, but also the accuracy of Exhibit 44.  14 You also had the testimony of Mr. Livadas  15 that in reliance upon that stock sale in April 2013  16 he credited W.A.M. clients -- credited their  17 accounts with owning that stock and had to at times  18 go out and cover by either buying short positions or  19 buying other stock to cover that. The cover has  20 nothing to do with the damages in this case but it  21 has -- the conduct supports the conclusion that  22 there was an April 2013 transaction for the stock  23 sale. All of this conduct, your Honor, is  24 consistent with the April 2013 stock sale and all of</p>
<p style="text-align: right;">Page 32</p> <p>1 it is consistent -- further supports the accuracy of  2 Exhibit 44.  3 Now, as I mentioned, there was a lot of  4 evidence going to credibility. And the first place  5 to look would be Exhibit 2, which is the Weiser  6 Asset Management document opening form, and it is  7 riddled with questions -- it gives rise to a number  8 of questions as to the accuracy of the testimony of  9 Mr. Skarpelos. He indicated on the fourth -- the  10 fifth page that his income was between \$250,000 and  11 \$500,000. That wasn't true. He indicated that on  12 the next page that he expected to need funds from  13 this account in less than three years. Certainly  14 Exhibit 44 supports that. He almost immediately  15 started withdrawing funds but his testimony is that  16 it never happened.  17 Then there's the issue of the cash account  18 versus the margin account. And as best I could  19 understand Mr. Skarpelos' testimony, it's not  20 withstanding the clear language on the page that  21 describes the difference between the two accounts,  22 he had a different understanding than what a margin  23 account was and what a cash account was. All a  24 margin account was and the distinction between it</p>	<p style="text-align: right;">Page 33</p> <p>1 and a cash account was that a margin account allowed  2 a customer to purchase stock on margin, and there is  3 no suggestion by anyone in this case that that ever  4 happened here.  5 Exhibits 5 and 6, this is Mr. Skarpelos'  6 Skarpelos stock sale in 2007. And this gives rise  7 to serious credibility questions, your Honor  8 because, first, there's an email from Mr. Skarpelos  9 desperately needing money in October of 2017 and him  10 being willing to sell his stock, 950,000 shares, for  11 \$1.6 million because he desperately needed money.  12 THE COURT: I don't usually interrupt, but  13 you said "2017."  14 MR. NORK: 2007.  15 -- that he desperately needed money in  16 2007. He also testified that he had advised the SEC  17 that this sale took place, and yet we're now to  18 believe based on no evidence whatsoever that he  19 never got any money from the sale. Based on  20 Mr. Skarpelos' testimony and the testimony of  21 Mr. Pedafronimos, it appears that they carefully  22 word their answers with respect to "I never received  23 the money." Mr. Pedafronimos can say with a  24 straight face that he never received any of the</p>

<p style="text-align: right;">Page 34</p> <p>1 money in any of the transactions that he described  2 because all that money went to his father's account.  3 Mr. Skarpelos can state with a straight  4 face in 2007 he never received any money because he  5 asked Mr. Livadas to send it to an account of a  6 company called "Casad." But that's different than  7 the sale never taking place and that money never  8 changed hands.  9 Exhibit 7 is the email correspondence  10 between Mr. Skarpelos and Mr. Daniels, and what's  11 interesting on that is that it is clearly  12 Mr. Skarpelos' intent in leading up to meeting with  13 Mr. Daniels that he wanted to open an account and  14 deposit his stock certificates, and he did exactly  15 that. He left his stock certificates with Howard  16 Daniels. Look at the parties' conduct, not their  17 testimony. He left his original and only stock  18 certificates in Anavex with Mr. Daniels, and yet now  19 we're to believe that, according to Mr. Skarpelos,  20 that this was just a preliminary meeting in May of  21 2011. He repeatedly said these documents are just  22 preliminary documents. He left his only stock with  23 Anavex with Mr. Daniels. Look at his conduct, not  24 his testimony.</p>	<p style="text-align: right;">Page 35</p> <p>1 Exhibit 8 is a Know Your Customer form and  2 that's interesting for a number of reasons. One,  3 again, it shows continued efforts to open the  4 account but it's riddled with questionable entries,  5 to say the least. The second to last page is a bank  6 statement, a letter from Alpha Bank, stating that  7 Mr. Skarpelos, quote, has operated a checking and  8 savings account, closed quote. Well, we know that's  9 not true. We know that's not true based on the  10 testimony of Mr. Skarpelos and we know it's not true  11 because over an 11-year period Mr. Skarpelos was  12 able to provide four pages of bank documents in  13 response to discovery requests. He said he was able  14 to talk to someone at Alpha Bank, and I don't doubt  15 that, but that letter is not accurate.  16 The other interesting thing about Exhibit 8  17 is the utility bill. Remember under direct  18 examination of Mr. Skarpelos, he testified that, I  19 had the one meeting with Mr. Daniels, I never heard  20 from anyone at W.A.M. after that and I never heard  21 anything. Well, we know that's not true. Look at  22 the conduct, not the testimony. We know that's not  23 true because two months later -- at least two months  24 later Mr. Skarpelos, either by himself or through</p>
<p style="text-align: right;">Page 36</p> <p>1 his assistant, Mr. Pedafronimos, provided the  2 utility bill to W.A.M.  3 So, the testimony that, I never heard  4 anything from W.A.M. after I met with them in The  5 Bahamas, is plainly not true. It is not true and it  6 calls into question the credibility of the testimony  7 of Mr. Skarpelos. Exhibit 9, this is a copy of the  8 passport of Lambros Pedafronimos that is stamped by  9 -- stamped by Equity Trust Bahamas May 31, 2011. I  10 apologize for laughing but I find the testimony of  11 Mr. Skarpelos and Mr. Pedafronimos regarding this  12 Exhibit 9 to be unbelievable, meaning I don't  13 believe them.  14 Mr. Pedafronimos says, I have no  15 recollection of anyone ever taking my passport,  16 making a photocopy, stamping it, notarizing it, and  17 giving me my passport back. Mr. Skarpelos says,  18 This may have happened when I went out to get a  19 smoke, but Mr. Pedafronimos testified that the  20 meeting took about 10 minutes. This is not  21 believable, your Honor. And, plainly, the purpose  22 of signing Exhibit 9 wasn't because Mr. Pedafronimos  23 was opening an account. There's no evidence to  24 support that. It was to allow Mr. Pedafronimos to</p>	<p style="text-align: right;">Page 37</p> <p>1 do exactly what he did afterwards, which is ask Mr.  2 Livadas to withdraw money.  3 Exhibits 12 and 11, this is an email asking  4 him to transfer money. He said there was an effort  5 to transfer it, it got stuck because he forgot to  6 put his sister's name on the wire transfer request  7 and it didn't go through. Exhibit 18 is the same  8 thing, a wire request in April of 2013 where bank  9 information is provided to Mr. Livadas. And Exhibit  10 19 is the same thing the next month, providing bank  11 information to Mr. Livadas.  12 What we are asked to believe from  13 Mr. Pedafronimos is that these wire requests,  14 Exhibit 12 and 11, 18, and 19, they have nothing to  15 do with the W.A.M. account that Mr. Skarpelos had,  16 absolutely nothing. Instead, what these have to do  17 with allegedly are an account that Mr. Pedafronimos  18 claims that he had with Verdmont, but Mr. Livadas  19 has nothing to do with Verdmont. He's not an owner,  20 officer, he's not an account representative. There  21 is no connection between Mr. Livadas and Verdmont.  22 In fact, Mr. Pedafronimos testified that he didn't  23 meet. He wasn't introduced to the owners of  24 Verdmont until late 2013.</p>

<p style="text-align: right;">Page 38</p> <p>1 And then when the discrepancy was pointed 2 out to him between that date, late 2013, and all of 3 these emails leading up to that date, which were 4 supposedly evidence of a wire transfer out of his 5 Vermont account, then he backed up and said, Oh, 6 no. I said I had met them face to face in 2013, but 7 I knew them long before. That, your Honor, is 8 highly suspect.</p> <p>9 It's also highly suspect that the wire 10 transfer requests have nothing to do with Tom's 11 account by looking at Exhibit 18. Exhibit 18 is a 12 September email from Mr. Pedafonimos to Mr. 13 Livadas. The title of it is "Quadruple bypass," and 14 there's bank information provided. Mr. Livadas 15 responds to that email "Quadruple bypass, here's 16 some bank information." He responds in Exhibit 59 17 and his response at the time of receiving that 18 email, which would certainly lend more credence to 19 the believability of it, is an instruction to his 20 assistant at W.A.M. saying, "Hi, can you transfer 21 \$20,000 as a shareholder withdrawal to details below 22 as soon as possible. Tom had heart attack and is 23 waiting for payments to stay alive." 24 If you are to believe the testimony of</p>	<p style="text-align: right;">Page 39</p> <p>1 Mr. Pedafonimos and Mr. Skarpelos, you must 2 conclude that Mr. Livadas, within hours of receiving 3 the email from Mr. Pedafonimos, decided completely 4 on his own to send \$20,000 to Tom and that the wire 5 requests from Mr. Pedafonimos that prompted that 6 action by Mr. Livadas was just for Mr. Livadas to 7 have money to go spend and have fun. That, your 8 Honor, is not believable. This transaction winds up 9 with the \$20,000 entry in Exhibit 44 and the fact 10 that Mr. Livadas' immediate response to the email 11 from Mr. Pedafonimos is to, Please send \$20,000 to 12 Tom, calls into question the explanation provided by 13 Mr. Pedafonimos.</p> <p>14 Exhibit 20 is an email in May of 2013 where 15 Mr. Pedafonimos concedes, I monitor all of 16 Mr. Skarpelos' correspondence. And that's important 17 because there's an inconsistency in the testimony of 18 both Mr. Skarpelos and Mr. Pedafonimos about 19 whether or not and when they can get in touch with 20 Mr. Livadas. Sometimes they can, sometimes they 21 can't. And it's always in instances that serves 22 their purposes, but at least we have an admission in 23 Exhibit 20 that Mr. Pedafonimos monitors all of Mr. 24 Skarpelos' correspondence.</p>
<p style="text-align: right;">Page 40</p> <p>1 And then we've got all these emails, 2 approximately from Exhibit 21 through Exhibit 23, 3 about the Chinese sale, and the conclusion that can 4 be drawn from this email string is a couple things. 5 One, there were certainly correspondence that would 6 lead Mr. Livadas to conclude that they were going to 7 have a second sale of the stock. The testimony of 8 Mr. Skarpelos and Mr. Livadas -- of 9 Mr. Pedafonimos, excuse me -- is that except they 10 never really told Mr. Livadas that that sale wasn't 11 gonna go through. They never told him they were 12 never going to send the originals to Bouts. They 13 never told him they didn't want to go through with 14 the deal.</p> <p>15 We later find out why that is. Because 16 right about the time that Mr. Livadas is anxiously 17 trying to close that deal because he found a buyer, 18 Mr. Skarpelos is giving away his stock. He didn't 19 have stock to cover the sale. And then we have the 20 testimony about what the purpose was of getting the 21 Purchase and Sale Agreement notarized. 22 Mr. Pedafonimos was forthright enough to admit, 23 yeah, when the document was notarized and when Mr. 24 Livadas asked me to courier the original to Bouts, I</p>	<p style="text-align: right;">Page 41</p> <p>1 thought the deal was going to be done. I thought it 2 was close to being finalized.</p> <p>3 Mr. Skarpelos said, No, no, no. They 4 needed my notarized signature just as a sample, as 5 an example because it was all preliminary. This is 6 consistent with the story about the account opening. 7 It was all just preliminary. But there was no 8 rational or logical explanation why any prospective 9 buyer needs to see a notarized, signed copy of the 10 Purchase and Sale Agreement. There is no logical 11 explanation for that.</p> <p>12 Finally, we have Exhibit 60, which is 13 admitted to show all of the email correspondence 14 between Mr. Livadas and Mr. Skarpelos during the 15 time frame that Mr. Skarpelos claimed that he 16 couldn't reach or communicate or speak with anyone 17 at W.A.M. This is where, again, the testimony 18 starts changing and shifting a little over time. 19 Mr. Skarpelos admitted and Mr. Pedafonimos admitted 20 in their deposition testimonies that they understood 21 to be Mr. Livadas the boss of W.A.M. and that 22 there's no -- there's no doubt that Mr. Skarpelos 23 admits that he was able to communicate with Mr. 24 Livadas either via email or phone or text message.</p>



<p style="text-align: right;">Page 42</p> <p>1 But they further claimed there was a period  2 of time they couldn't reach him, and this is where  3 there's an important distinction. The claim is not  4 that they weren't satisfied with the message that  5 was being relayed to Mr. Skarpelos about the status  6 of his stock. The allegation is that they could not  7 reach anyone at W.A.M., not that they didn't like  8 the message, but that they were getting zero  9 messages. That is shown in Exhibit 49, the letter  10 from Mr. Skarpelos' counsel and it is shown in the  11 declaration of Mr. Skarpelos that he couldn't reach  12 anyone at W.A.M. That is plainly not the case. He  13 was having ongoing conversations with the person he  14 understood to be the boss of W.A.M., Mr. Livadas.  15 And then there's other indicia of calling  16 into question the reliability of the testimony of  17 Mr. Skarpelos and Mr. Livadas. There's the whole  18 line of questioning about whether or not they'd ever  19 heard of the term "Weiser Capital." Mr. Skarpelos  20 said, I never heard of Weiser Capital until this  21 lawsuit, and yet Mr. Skarpelos' recollection was  22 refreshed and revealed that as far as back as 2011  23 Anavex was doing deals with Weiser Capital.  24 There is the whole suspicious communication</p>	<p style="text-align: right;">Page 43</p> <p>1 about what was meant by Mr. Skarpelos' quote,  2 position, in his stock. He admits that he was  3 instructed to sell some or all of his position, that  4 Mr. Skarpelos further explained that ultimately what  5 he agreed to do preliminarily was to sell to the  6 Chinese investors half of his position. And what  7 half of his position came to be was the document in  8 Exhibit 33 and half his position as evidenced in  9 Exhibit 33, is 3,316,666 shares of stock.  10 But we know -- we now know that that was  11 not half of his position. At the time that this  12 document, Exhibit 33, was signed and notarized,  13 there was one stock certificate for a position that  14 was much higher than 6.6 million and that half of  15 that was much more. This was just a continued  16 effort to lead Mr. Livadas down the primrose path  17 that half his position was still the \$3.3 million --  18 3.3 million shares and that he hadn't converted the  19 stock certificate.  20 And then there's just the baffling line of  21 testimony from Mr. Skarpelos about his ongoing  22 business relations with Mr. Livadas. He testified  23 in 2007, I cut a deal with him that was supposed to  24 be for \$1.6 million. I told the SEC I got the money</p>
<p style="text-align: right;">Page 44</p> <p>1 but I never got a penny. Two years later he  2 testified that he entered into another deal with Mr.  3 Livadas where the total quantity of stock was about  4 \$1.9 million. He told the SEC that he got that  5 money but he never got a penny. Two years later he  6 gets together again with Mr. Livadas to open an --  7 at Mr. Livadas' suggestion opens an account at  8 W.A.M. But then he testified that he starts not  9 having faith in Mr. Livadas and not trusting him, so  10 he signs documentation to have his stock certificate  11 canceled. And yet four months later, four months  12 after being so suspicious and so concerned and  13 hearing rumors and losing faith, he goes back into  14 another deal with Mr. Livadas.  15 Your Honor, that is not believable. It is  16 not believable. The only thing that can be  17 concluded from that is maybe the money didn't go  18 straight to an account held by Mr. Skarpelos,  19 because we know he didn't have a bank account and  20 admits that, but there is no logical explanation for  21 why Mr. Skarpelos would continue to go into business  22 and do deals with Mr. Livadas if he wasn't receiving  23 anything from the transactions.  24 But the evidence that really calls into</p>	<p style="text-align: right;">Page 45</p> <p>1 question the credibility of Mr. Skarpelos, again,  2 keep in mind we have Exhibit 44. We have other  3 documents admitted into evidence that offer indicia  4 of support for the accuracy of Exhibit 44. The only  5 thing we have that calls into question the accuracy  6 of Exhibit 44 is Mr. Skarpelos' unsupported  7 testimony. And the Court, obviously, must draw its  8 own conclusions about the credibility of a witness  9 but Exhibits 13, 14, and 15 absolutely call into  10 question Mr. Skarpelos' credibility.  11 In January of 2013 Mr. Skarpelos signed a  12 corporate indemnity claiming that his stock  13 certificate was lost. That was not true. Mr.  14 Skarpelos knew exactly where his stock certificate  15 was. It was with Howard Daniels. He gave it to him  16 for W.A.M. as part of opening the account. Exhibit  17 14 is three months later in March of 2013 where Mr.  18 Skarpelos signs an affidavit under oath where he  19 states that his stock certificates are lost. They  20 were not lost. Mr. Skarpelos knew exactly where  21 they were. And in Exhibit 15 Mr. Skarpelos signed a  22 stop transfer order where he represents that his  23 stock certificates are lost.  24 He didn't tell Mr. Livadas. He didn't even</p>

<p style="text-align: right;">Page 46</p> <p>1 tell Mr. Pedafronimos that he executed these  2 documents at the same time, your Honor, in  3 March 2013 that he asked Mr. Pedafronimos to ask Mr.  4 Livadas to try to sell some of his position. This  5 was a secret transaction that he didn't tell anyone  6 about. Not only secret, but incorrect and a false  7 statement in Exhibit 14 because it's not true. The  8 stock was not lost. There was never an issue about  9 the location of the stock. There's no evidence to  10 suggest that Mr. Skarpelos ever had any inquiry  11 about where his stock was. Mr. Pedafronimos doesn't  12 support that and certainly Mr. Livadas doesn't  13 support that.</p> <p>14 We know that there was regular  15 communication between Mr. Skarpelos and Mr. Livadas  16 at that time and yet there's no written evidence  17 asking about, Where is my stock certificate. The  18 first explanation was that this -- the affidavit was  19 signed because nobody at W.A.M. could be reached,  20 but we know that's not true. This was plainly an  21 effort to keep the stock and not have to settle up  22 with W.A.M. At the time that the stock certificate  23 -- the Affidavit of Missing Stock Certificate was  24 submitted, Exhibit 44 demonstrates that Mr.</p>	<p style="text-align: right;">Page 47</p> <p>1 Skarpelos had a negative balance of about \$140,000  2 to \$150,000. But secretly filing an Affidavit of  3 Lost Stock Certificate and not telling anyone, it  4 allows him to have his cake and eat it too. He gets  5 the stock and he doesn't have to settle up with  6 W.A.M.</p> <p>7 And that conclusion is supported by both  8 his physical -- Mr. Skarpelos' physical condition  9 and the condition of Anavex at or about the time  10 that these documents, Exhibit 13, 14, and 15, were  11 being executed. Mr. Skarpelos testified that all of  12 his directors had left and he was the only one at  13 this time. Mr. Skarpelos testified that Anavex was  14 being threatened to be delisted. Mr. Skarpelos  15 testified that Anavex only had about 500 bucks in  16 cash at the time. And Mr. Skarpelos also testified  17 that he was going into heart surgery and was not  18 sure if he was going to come out of heart surgery.</p> <p>19 These were trying times and stressful times  20 for Mr. Skarpelos. I don't doubt it. But in order  21 to settle up his affairs before going into heart  22 surgery and to maximize his assets, it appears that  23 Mr. Skarpelos hatched a plan to get his stock back  24 and never settle up with W.A.M.</p>
<p style="text-align: right;">Page 48</p> <p>1 There is no explanation of this behavior  2 that does not call into question the credibility of  3 Mr. Skarpelos, and because of that it poisons his  4 testimony throughout this case. All we have to call  5 into question the accuracy of Exhibit 44 is the  6 unsupported testimony of Mr. Skarpelos. And, your  7 Honor, it cannot be believed. Mr. Skarpelos'  8 unsupported testimony, as I indicated, is poison  9 throughout this case. And in weighing the  10 credibility of the witnesses, one must conclude at  11 least at 51 percent that Mr. Livadas' version of the  12 events that took place in this matter is the version  13 that actually took place, that a W.A.M. account was  14 opened, that a stock sale occurred in April of 2013,  15 that Mr. Skarpelos' W.A.M. account was credited with  16 that money, that Mr. Skarpelos and his assistant,  17 Mr. Pedafronimos, afterwards withdrew money from  18 that account and that as a result, when we again go  19 back and focus on the transaction, it's a  20 transaction between Mr. Skarpelos and W.A.M., and  21 the deal was this:</p> <p>22 Mr. Skarpelos was going to receive \$250,000  23 and he was going to transfer 3.3 million shares of  24 his Anavex stock to W.A.M. That, your Honor, is why</p>	<p style="text-align: right;">Page 49</p> <p>1 the Weiser defendants and W.A.M. in particular is  2 entitled to the stock and that's the conclusion that  3 should be reached by your Honor. Thank you.</p> <p>4 THE COURT: Mr. Nork, I will allow you just  5 to address one issue because you're only going to  6 get one chance to talk about the declaratory  7 judgment request. You do get a rebuttal option on  8 the contract issues.</p> <p>9 But just address for me -- and Mr. Anderson  10 you can address this as well -- in a more general  11 sense the court's ability to fashion a remedy as a  12 court of equity with a declaratory judgment.  13 Assuming that there is no contract, do you still  14 believe that the court has the ability to fashion  15 what it believes to be an appropriate remedy  16 regarding the declaratory relief action?</p> <p>17 MR. NORK: Absolutely, your Honor. The  18 first case I cite, the Balish case, in that case the  19 court ignored the respective respects of the parties  20 and came up with its own relief.</p> <p>21 THE COURT: And that's what case? What's  22 the citation?</p> <p>23 MR. NORK: 546 P.2d, 1297.</p> <p>24 The court said I'm not granting -- in that</p>

<p style="text-align: right;">Page 50</p> <p>1 case the court said, I'm not granting ownership of 2 the property to either of you because I think it 3 should go to the bank, and directed those 4 proceedings back to the trial court. This court is 5 a court of equity and it has virtually unfettered 6 discretion in fashioning a remedy.</p> <p>7 Thank you, your Honor.</p> <p>8 THE COURT: As I said, Mr. Anderson, we're 9 going to take a brief recess. It's only 10:20 now, 10 so I think you should be able to -- well, do you 11 believe you'd be able to do your closing argument 12 before noon?</p> <p>13 MR. ANDERSON: I feel very comfortable, 14 your Honor, that we will be finished by noon.</p> <p>15 THE COURT: Okay. So, if he finishes by 16 noon, then what we'll do, Mr. Nork, is I'll go to my 17 judges' meeting and then we'll come back and you 18 make your rebuttal argument regarding the contract 19 issues.</p> <p>20 Counsel, given the fact there are cases 21 that have been cited and some additional cases cited 22 by Mr. Nork that I think it's incumbent upon the 23 court to review, I don't think I'll rule from the 24 bench today. I think that's probably just more</p>	<p style="text-align: right;">Page 51</p> <p>1 prudent. My court clerk was smart enough to advise 2 me that, apparently, it's going to be snowing like 3 crazy on Monday so, gentleman, if you're leaving, 4 leave today. That's the understanding that I 5 have -- and by "gentlemen," I mean Mr. Livadas and 6 Mr. Skarpelos -- because it's about to get crazy 7 weather-wise here in the Northern Sierras. So, I 8 doubt I'll come back on Monday because I don't want 9 to put the attorneys out by trying to have you get 10 here if it's a nasty weather day and so let me look 11 right now on my calendar, anticipating that I'm not 12 going to rule from the bench today.</p> <p>13 And then I'll be able to go look at the 14 cases cited by Mr. Nork and if Mr. Anderson has 15 additional case law he wants me to look at. Tuesday 16 is not going to work because I have my criminal 17 calendar and then I'm in Carson City for a supreme 18 court committee hearing.</p> <p>19 How about 3:00 on Wednesday?</p> <p>20 MR. NORK: That works for me, your Honor.</p> <p>21 THE COURT: Mr. Anderson?</p> <p>22 MR. ANDERSON: February 6th at 3:00.</p> <p>23 Yes, your Honor.</p> <p>24 THE COURT: Okay. Then we will schedule</p>
<p style="text-align: right;">Page 52</p> <p>1 right now 3:00 on Wednesday for me to come back and 2 put the findings of fact, the conclusions of law, 3 and the court's decision on the record.</p> <p>4 I apologize both to Mr. Livadas and to Mr. 5 Skarpelos. You don't have to be here for that. I 6 don't know if you'd like to be here. I don't mean 7 to delay your travels. If you want, you can be 8 here; if not, you can hear about it and read about 9 it. I'll be in recess for about ten minutes.</p> <p>10 (Recess taken).</p> <p>11 THE COURT: Please be seated. We will go 12 back on the record in Skarpelos v. Weiser entities.</p> <p>13 Mr. Anderson, your closing argument, sir.</p> <p>14 CLOSING ARGUMENT</p> <p>15 MR. ANDERSON: Thank you, your Honor. The 16 first thing I'd like to do is echo Mr. Nork's 17 comments to the Court on the Court's assistance, and 18 also I'd like to thank on behalf of Mr. Skarpelos 19 Mr. Adams and myself you and your staff and for your 20 patience and hard work throughout this week.</p> <p>21 One thing that I'm really glad that I heard 22 in Mr. Nork's closing argument is that they finally 23 picked a theory that, I guess, they'll stick with. 24 So, what I heard him say is that it's definitely now</p>	<p style="text-align: right;">Page 53</p> <p>1 the April 2nd, 2013, transaction that Weiser, I 2 think it appears now, finally Weiser Asset 3 Management rather than Weiser Capital is relying 4 upon for this Court to enter its judgment.</p> <p>5 Now, at the beginning of the trial when I 6 heard that theory for the first time, I placed an 7 objection on the record for the Court and noted it, 8 I think, several times subsequently that I don't 9 think that that's a theory that was pleaded properly 10 and I object to any sort of relief being based on 11 that theory in this case.</p> <p>12 Now, Mr. Nork did go into a few authorities 13 in his closing argument and one that I absolutely 14 agree with him on is our pleadings, our rules of 15 procedure regarding pleadings are designed to give 16 fair notice to the parties. And those words are 17 important, particularly fair. As the Court pointed 18 out yesterday in my argument on my Rule 50 motion, 19 they weren't required to specify a particular date 20 of contract but they chose to. They chose to pick 21 the date of July 2013 as the contract that they were 22 relying on and that contract is Exhibit 30 in this 23 trial.</p> <p>24 And they picked that date, which is</p>

<p style="text-align: right;">Page 54</p> <p>1 consistent with the correspondence that Mr. Alvarez 2 sent to NATCO on October 30th, 2015, that started 3 this whole process. So, the notice that was had 4 throughout this case is that we're relying on the 5 July 13th contract. That's when Mr. Skarpelos sold 6 the stock to -- initially it was Weiser Asset 7 Management and then later it was Weiser 8 collectively. Beyond that it was Weiser Capital, 9 but ultimately that's the contract they were relying 10 on. Well, they've backtracked off of that at this 11 trial for the first time and now they'll stick with 12 the April 2nd, 2013, transaction, which is what I'll 13 talk about.</p> <p>14 So, Mr. Nork said yesterday in reference to 15 that April 2nd, 2013, alleged sale transaction, he 16 used the word "simplicity." This is a simple 17 transaction. And I have to say with all due respect 18 to Mr. Nork, Weiser's claims -- the last word I 19 would use for that throughout the course of this 20 litigation and trial is "simple." They have a 21 rather tortured history. If the cases were really 22 that simple, I don't think the Court would have seen 23 a revolving door of parties claiming ownership to 24 the stock on their side. And Mr. Skarpelos wouldn't</p>	<p style="text-align: right;">Page 55</p> <p>1 have had to spend the last three years in litigation 2 trying to decipher from their pleadings and from all 3 documents these that they've offered up which entity 4 is actually claiming ownership.</p> <p>5 I thought I had the answer to that 6 question, your Honor, when I flew 7,000 miles to 7 Athens, Greece, in October of 2018 and asked Mr. 8 Livadas, Who owns the stock? Mr. Livadas testified 9 under oath that the July 2013 Purchase and Sale 10 Agreement was intended to document the April 2nd, 11 2013, transaction by which, according to both his 12 declaration and deposition testimony, was Weiser 13 Bahamas Limited that operates under the alias 14 "Weiser Capital," according to him, and that Weiser 15 Capital was the owner of the stock.</p> <p>16 And I read that testimony to your Honor 17 yesterday at page 228 of Mr. Livadas' deposition and 18 at page 13 of Mr. Livadas' declaration. I won't go 19 back through the deposition testimony again but that 20 is in evidence. I have to say I didn't object 21 during Mr. Nork's closing argument because I don't 22 think that's -- I wouldn't like someone doing that 23 to mine, but I'm not sure that everything he read to 24 the Court in closing is actually in evidence from</p>
<p style="text-align: right;">Page 56</p> <p>1 Mr. Livadas' declaration.</p> <p>2 But what I heard him to say is that Mr. 3 Livadas had to have been confused at the deposition. 4 We were referring to Weiser, we were referring to 5 Weiser Capital, and he had to have been confused. 6 If the Court looks at his declaration in April of 7 2018 -- and Mr. Nork read from that paragraph 13 -- 8 "In April 2013 Skarpelos sold 3,316,666 shares of 9 the Anavex shares he had deposited with W.A.M. in 10 2011 to Weiser Capital in exchange for \$250,000." 11 And then he mentioned that that paragraph goes on to 12 mention W.A.M. in the account statement, but this 13 could not be more clear that he was claiming it was 14 Weiser Capital at that time.</p> <p>15 So, when I asked him on page 228 of his 16 deposition about Exhibit 30, the Trial Exhibit 30 17 which specifically names Weiser Capital as the buyer 18 of the stock, he said, with no confusion whatsoever, 19 that is documenting the April 2nd transaction. So, 20 if you believe that, he's saying Weiser Capital was 21 the buyer by way of the April 2nd transaction.</p> <p>22 Lo and behold, we get here and he tells the 23 new story that I talked about earlier and he's also 24 said that on, I think, Monday morning that the July</p>	<p style="text-align: right;">Page 57</p> <p>1 transaction that he talked about in his deposition 2 was actually meaningless. It was to document a 3 transaction that never took place. And then he took 4 that document that was negotiating a prospective 5 second deal and he filled it out in reference to the 6 first deal for anti-money-laundering law 7 regulations. And I think the Court asked Mr. 8 Livadas yourself directly, So, you used it for a 9 purpose other than its intended purpose, and the 10 answer was, Yes.</p> <p>11 So, I think where we are now is that W.A.M. 12 comes before this Court for the first time this week 13 and says, Make us the owner of the stock, and what 14 the Court noted yesterday is -- well, I think what 15 Mr. Nork said yesterday is W.A.M. is a, quote, 16 beneficial owner of the stock. And the only way 17 that could be is if it had been an intermediary, 18 which it alleges, and a beneficial owner of a stock 19 for a third party, as the Court noted, is the 20 intended recipient.</p> <p>21 So, W.A.M. was never intended to be the 22 recipient of the stock ultimately, and so I think 23 what they are arguing now is that W.A.M. incurred 24 some damages in order to try to make this thing</p>

<p style="text-align: right;">Page 58</p> <p>1 right with the third-party buyer and Tom Skarpelos 2 is required to make it right with them. 3       And what they're asking the Court to do is 4 to give them all the stock, when all we have is Mr. 5 Livadas' testimony that, Well, we had to do some 6 things, I'm not really sure what they were, we may 7 have shorted some things, we may have bought some 8 alternative stock. There's no evidence. Where I'm 9 going with that, your Honor, is you asked Mr. Nork 10 at the end of his argument, Can the Court fashion an 11 alternative remedy? 12       And I think if this is really what W.A.M. 13 is claiming and they plead it right and they 14 asserted this claim from the beginning and offered 15 the right proof, that would have been the claim that 16 they should have pursued. But what they've got is a 17 claim for damages based on, it sounds like, an 18 account agreement with Mr. Skarpelos that there's no 19 evidence of terms and conditions in there and no 20 evidence from which a court can fashion an 21 alternative remedy. 22       So, I think that's their ultimate problem, 23 is they claim they've been exposed to liability. I 24 think that was Mr. Nork's exact words yesterday.</p>	<p style="text-align: right;">Page 59</p> <p>1 And if that's what you're pursuing, wouldn't the 2 award of stock actually be a windfall, and it would. 3 There's no evidence that they've been damaged in the 4 amount that the stock is worth on whatever date the 5 valuation would be. 6       Your Honor, I've covered a little bit of 7 the same ground yesterday. It's not my intent to 8 repeat that. I think the Court understands that I'm 9 not going to cover the same ground, but some of the 10 evidence I'm going to be discussing will weave in 11 and out and I'll try to keep that to a minimum. 12       Mr. Skarpelos' case is rather simple. He 13 was issued the shares in 2009 by Anavex and he's 14 never been divested of ownership. He is, was, and 15 always has been the owner of the disputed stock at 16 issue. The only way he would not be the owner is if 17 something happened, as W.A.M. or Weiser Capital 18 alleges, there had to have been a contract for sale. 19 As I've explained Weiser's claim, whether it's 20 Weiser Asset Management or Weiser Bahamas aka Weiser 21 Capital, is just convoluted and incredible. 22       Weiser admits that Mr. Skarpelos was the 23 undisputed owner of the stock prior to either the 24 alleged July 2013 agreement or the April 2nd</p>
<p style="text-align: right;">Page 60</p> <p>1 agreement, whatever is their soup du jour. All 2 they've offered in support of that claim is a 3 hodgepodge of random documents that are really 4 dwarfed by the documents they did not produce. To 5 me, as a Class 1 broker-regulated industry the 6 documents that they did not produce in this case 7 speak volumes over what they're trying to use to 8 prove their case in evidence. 9       What's missing is a large number of 10 documents that would have been available to any 11 legitimate institution in any legitimate transaction 12 and just have not produced any of those. They rely 13 almost exclusively on the testimony of Mr. Livadas, 14 who admits that he was not involved in the 15 operations of W.A.M. at the relevant time in 2011, 16 '12 and '13. He has no clue about how, if at all, 17 W.A.M. reported client transactions and he has no 18 knowledge of their records. 19       He's basing his testimony, your Honor, on 20 reviewing a portion -- and I think he said that 21 directly -- or a small part of the large number of 22 what sounds like quite haphazardly kept documents in 23 a storage unit somewhere in The Bahamas. There 24 doesn't appear to be any computerized records. The</p>	<p style="text-align: right;">Page 61</p> <p>1 documents aren't sorted by client transaction. And 2 if I understood his testimony correctly, they're 3 organized by transactions, so I don't know if that's 4 numerically, sequentially, chronologically. There's 5 no indication that anything they've produced was 6 kept in any reliable method. And Mr. Nork went 7 through quite a number of documents and exhibits and 8 I'd like to discuss some that he did and some that 9 are not mentioned by him. 10       But Exhibit 1 is the stock certificate that 11 was issued to Mr. Skarpelos for the stock at issue. 12 And as Mr. Skarpelos pointed out and I think as 13 Mr. Walker confirmed, these shares are restricted 14 shares. They can't just be traded to anybody and 15 they can't just be traded in any manner. I'll get 16 to Mr. Walker's testimony a little later, but these 17 types of shares require a number of things that 18 haven't been even suggested that W.A.M. did in this 19 case. 20       And so I think testimony from Mr. 21 Skarpelos, Mr. Lambros Pedafonimos, and Mr. Walker 22 said you have to have an opinion of counsel because 23 you have to have the particular type of seller, 24 especially if it's an affiliate, like a 10 percent</p>

<p style="text-align: right;">Page 62</p> <p>1 or more stock owner or officer, director. And you  2 have to have this done carefully and legally in  3 order for it to be valid. There's simply no  4 evidence, especially with the April 2nd transaction,  5 that any of that took place.</p> <p>6 Exhibit 2, I think, is significant. Mr.  7 Skarpelos did submit an account application. He  8 never disputed that and he's never said, It wasn't  9 my intent to open an account. He completed the  10 application -- or I should clarify. Mr. Daniels  11 completed the application in conversation with Mr.  12 Skarpelos. So, I don't think that Mr. Skarpelos  13 wasn't intending to open an account. It's just that  14 one was never actually opened. If you look at the  15 first paragraph of that document, Exhibit 2, it  16 says, "When we accepted is when it becomes a valid  17 open account," and there's no evidence, including  18 even in W.A.M.'s records, that Mr. Skarpelos was  19 notified that his account had been opened.</p> <p>20 So, it begs the question, if an account  21 can't be opened or hasn't been opened, how can you  22 actually deposit certificates in there for the  23 purpose of, as they say, funding it? And Mr. Nork  24 made much of the cash account. There's been a lot</p>	<p style="text-align: right;">Page 63</p> <p>1 of debate about the cash account. The Court can  2 read the document for itself. Mr. Skarpelos  3 testified as to his understanding of what a cash  4 account is and Mr. Livadas testified as to his  5 understanding, even though he wasn't involved in the  6 preparation of this document and doesn't know  7 anything about W.A.M.'s policies and procedures at  8 that time. They had different accounts of what a  9 cash account means.</p> <p>10 But W.A.M. is a Class 1 broker and Mr.  11 Livadas testified that Class 1 brokers and other  12 brokers owe a fiduciary duty to their clients. And  13 so if there's any ambiguity in this document as to  14 what a "cash account" means, that's got to be  15 construed in favor of the client, Mr. Skarpelos, in  16 this case, if you believe their relationship was  17 ever established. There's no evidence that Mr.  18 Skarpelos was ever notified that the account had  19 been opened. There's no evidence that he was ever  20 shown or assigned an account number. I would note  21 the account number that's written on the account  22 application of Exhibit 2 is different than the  23 number on Exhibit 44.</p> <p>24 There's no evidence that Mr. Skarpelos ever</p>
<p style="text-align: right;">Page 64</p> <p>1 received any supplemental documents, any terms and  2 conditions. I mean, that would be a basic document  3 that should have been available to W.A.M. And if it  4 was important to their claim, as I believe it is, to  5 the new claim, April 2nd, then they should have  6 produced it or should have gotten it in evidence and  7 they did not do that.</p> <p>8 Exhibit 7 is another significant document,  9 your Honor. This is the only email ever between  10 W.A.M. and Mr. Skarpelos. And if you look at the  11 Bates number, it was actually produced by Mr.  12 Skarpelos in this case. W.A.M. did not produce this  13 document. The only other evidence of possible  14 communication between W.A.M. and Mr. Skarpelos after  15 this date of application is the power bill, the  16 document that, apparently, was sent or may have been  17 sent weeks or a month or two after the account  18 opening. That's Mr. Skarpelos sending them  19 something.</p> <p>20 So, let's assume that that's the case.  21 After this power bill is sent in, there's not one  22 email, letter, account statement, transaction  23 report, certainly nothing reporting that the  24 April 2nd transaction in their records showing that</p>	<p style="text-align: right;">Page 65</p> <p>1 anything was ever communicated to Mr. Livadas -- I'm  2 sorry -- Mr. Skarpelos.</p> <p>3 Let's look at Exhibit 8, which is the  4 identity verification form, and it's been referred  5 to as a Know Your Customer document. As I  6 understand it, W.A.M. is claiming that Exhibit 9,  7 Mr. Pedafronimos' passport, is also a Know Your  8 Customer information form. Mr. Nork got the most  9 animated when talking about the power bill and  10 Mr. Pedafronimos' passport, but the important part  11 about Exhibit 8 really is the very first paragraph  12 where in no uncertain terms W.A.M. lets its clients,  13 and whoever may be dealing on behalf of the client,  14 if you're going to authorize someone other than  15 yourself -- well, and, actually, even yourself --  16 you must complete this form.</p> <p>17 And it also says that they must complete  18 powers of attorney, trading authorizations,  19 signatory cards, standard things of any professional  20 organization would say, I want to know in writing  21 from you that you're letting this person execute  22 trades on your behalf.</p> <p>23 And the testimony from both Mr. Skarpelos,  24 Mr. Pedafronimos was that that never happened. Mr.</p>

<p style="text-align: right;">Page 66</p> <p>1 Skarpelos is the only one that filled out this  2 document or anything like it. And Mr. Livadas  3 admitted on cross-examination W.A.M. doesn't have  4 these records. They don't have any record that says  5 Christos Livadas is authorized to perform  6 transactions on Mr. Skarpelos' account. They don't  7 have documents showing that Mr. Pedafonimos was  8 authorized to conduct transactions on Mr. Skarpelos'  9 account. There's absolutely nothing suggesting  10 there was anyone who would have been authorized, had  11 an account been opened, to perform these  12 transactions.</p> <p>13 Now, this form requests that that  14 information be provided for anti-money-laundering  15 regulations of The Bahamas. And I asked Mr. Livadas  16 if you execute a transaction on this without  17 submitting this information, would you be in  18 violation of anti-money-laundering violations, and I  19 believe his answer was yes. But what's very clear,  20 and I think certain, is that whether that's a  21 violation of AML or not, what he did in executing  22 transactions or what W.A.M. allowed him to do  23 violated W.A.M.'s own policies. He did admit that.  24 Now, Mr. Nork, again, with Exhibit 9 is</p>	<p style="text-align: right;">Page 67</p> <p>1 suggesting that this was a Know Your Customer  2 information. Whether Mr. Pedafonimos submitted it  3 that day, which he doesn't remember, or didn't,  4 clearly handing someone a passport is not the same  5 as saying -- as Mr. Skarpelos saying this person is  6 authorized to deal on my account. Exhibits 13  7 through 16, these are the -- this is the issue of  8 the lost stock certificate. And you heard Mr.  9 Skarpelos testify as to his reasoning in doing this.  10 He'd indicated he had concerns on a number of levels  11 including the departure of Howard Daniels, The  12 Bahamas securities complaint involving W.A.M., lack  13 of communication by anyone directly affiliated with  14 W.A.M.</p> <p>15 I'll get to Mr. Livadas in a minute, but I  16 think it was established at that time that he was  17 not formally with W.A.M., even though Mr. Skarpelos  18 thought he was. Weiser doesn't dispute those other  19 things. Didn't hear Mr. Livadas deny that there was  20 an investigation involving the SEC of Bahamas of  21 W.A.M. at that time. You didn't hear him deny that  22 Mr. Daniels, the only identified contact in Exhibit  23 7 of Mr. Skarpelos at W.A.M., there's no email  24 whatsoever from W.A.M. And so those issues are</p>
<p style="text-align: right;">Page 68</p> <p>1 undisputed and I think Mr. Skarpelos, based on the  2 absolute utter lack of documentation from W.A.M.  3 itself in this case, had reasons to be worried.</p> <p>4 Now, I don't think Mr. Skarpelos said he  5 never had conversations with Mr. Livadas during this  6 time period. What he did say is Mr. Livadas said,  7 Don't worry, Tom, don't worry. Don't worry. And if  8 someone tells you that enough times, eventually  9 you'll say, I'm worried, and so he was concerned  10 about the legitimacy of W.A.M. He wasn't getting  11 satisfactory answers from Mr. Livadas and so he  12 canceled the stock.</p> <p>13 And I think the important thing to remember  14 in conjunction with that is that when he was  15 considering selling his stock in July of 2013, if a  16 deal had come to fruition and gotten to the point  17 where he could have written a stock certificate  18 number in the power of attorney, he could have  19 written in "Certificate 975." And Mr. Nork pointed  20 out the lack of emails from Mr. Skarpelos to Mr.  21 Livadas or W.A.M. saying, you know, anything about  22 the stock transaction or the opening of the account,  23 and I think Mr. Skarpelos testified in 2013 at some  24 point his Bizex --</p>	<p style="text-align: right;">Page 69</p> <p>1 THE COURT: Hold on. Mr. Livadas and Mr.  2 Nork. I'm trying to focus on what Mr. Anderson is  3 saying, so keep your conversation down a little bit  4 for me. Go ahead, Mr. Anderson. I apologize.</p> <p>5 MR. ANDERSON: Thank you, your Honor.</p> <p>6 I think Mr. Skarpelos testified that his  7 Bizex account is shut down and he can't access the  8 emails. So, the only person with access to those  9 emails at that point or now is Mr. Livadas, who  10 controlled the Bizex system. And so Mr. Livadas  11 didn't produce any of the hundreds of emails that  12 are supposedly in Exhibit 60 showing he was in  13 frequent communication with Mr. Skarpelos.</p> <p>14 He testified he could have, and this is  15 during the litigation. He pulled them up at request  16 of Counsel. He could have clicked on any of them  17 and printed them out and sent us all a copy. But  18 that didn't happen. He took a screen shot and sent  19 it to his counsel as the evidence that he's in  20 frequent contact with Mr. Skarpelos. And so they're  21 trying to make Mr. Skarpelos look suspicious when  22 they had the ability to produce all these emails and  23 somehow bolster their claims.</p> <p>24 Were the certificates lost? I think</p>

<p style="text-align: right;">Page 70</p> <p>1 Mr. Skarpelos knows he left them with W.A.M. but he  2 was highly suspicious and was worried and wasn't  3 getting answers or contact and so he selected the  4 closest option on those forms that he could find and  5 he went through legitimate legal channels to address  6 the issue.</p> <p>7 Exhibits 21 through 29 and 31 are the  8 emails back and forth between Mr. Pedafronimos and  9 Mr. Livadas regarding the proposed sale to the  10 Chinese investors. And the emails show that Mr.  11 Livadas is asking for blank forms, which both my  12 client, Mr. Pedafronimos, said they interpreted  13 those as examples to be shown to a Chinese investor  14 for possible sale. One thing that Mr. Pedafronimos  15 said that was really important in this case is that  16 the numbers -- specific numbers were not discussed  17 until after Mr. Skarpelos' heart surgery, after  18 April, May of 2013. And so the number of 6.6  19 million didn't come up until after the heart surgery  20 and then the number of 3.3 million didn't come up  21 until after the heart surgery.</p> <p>22 And the important part to focus in on that  23 is that at one point Mr. Pedafronimos says, Here's  24 the contract with the revised numbers that we</p>	<p style="text-align: right;">Page 71</p> <p>1 discussed. And that was a change from 6.6 million  2 to 3.3 million. And it begs the question, if 3.3  3 million had been sold in April of 2013, there  4 shouldn't have been a discussion of 6.6 million in  5 July, because there wasn't enough stock. And so  6 that revised number is important because Mr. Livadas  7 never writes back and says, What do you mean  8 'revised numbers'? There's only 3.3 million shares  9 left. What are you revising from this number to  10 this number? He doesn't dispute that.</p> <p>11 I think another important thing to look at  12 in these emails, Exhibit 21 to 29, is that Mr.  13 Livadas and Mr. Pedafronimos were on Mr. Skarpelos'  14 team. They're e-mailing back and forth referring  15 to, How do we complete it on our end, let me show  16 the Chinese a sample of what the deal will look  17 like. Mr. Livadas didn't deny he was supposed to be  18 acting on behalf Mr. Skarpelos. And then what does  19 he do later? Fill out an agreement where he  20 attempts to sell the stock to himself in Exhibit 30  21 and claim that he is now the owner. A fair  22 inference is that he induced Mr. Skarpelos believing  23 there would be a strategic investor to sign a  24 document and then tried to convey the stock to</p>
<p style="text-align: right;">Page 72</p> <p>1 himself.</p> <p>2 Mr. Skarpelos testified that when he did  3 have a notary sign these blank documents, he used  4 the most basic notary that's available because these  5 were samples. And if this was going to be a  6 legitimate transaction ultimately, he would have  7 used the kind of professor or lawyer that signed the  8 Affidavit of Lost Certificate and notarized that,  9 and that would have been the point at which the  10 transaction would have been final.</p> <p>11 And Mr. Walker testified himself that he  12 would not have relied upon the notary that was in  13 Exhibit 30 and 35 because those are in Greek and  14 they don't let NATCO know they're legitimate.  15 Nothing in these emails from Exhibits 21 to 29 and  16 31 say anything about an April 2nd transaction. You  17 never see Mr. Livadas saying, We've got the  18 April 2nd deal done and now we're focusing on this  19 part of it. There's just no reference to it at all.</p> <p>20 I think another indication of  21 Mr. Skarpelos' intent that no deal be final is that  22 he never sent the original notarized documents to  23 Mr. Boutsalis as requested by Mr. Livadas. He held  24 onto them and he had been burned in the past and</p>	<p style="text-align: right;">Page 73</p> <p>1 they make much of the fact that it sounds like  2 they're attacking his credibility by suggesting he's  3 a bad businessman. And they kinda chuckle when they  4 say, Well, he got duped in 2007, he got duped in  5 2009 three times, and here he goes again. Well,  6 their accusation that Mr. Skarpelos may be a poor  7 businessman I don't think is flattering to them.  8 There's basically saying, Hey, I was able to dupe  9 you once, dupe you twice, and here we go again. I  10 don't think that that's an effective argument for  11 them.</p> <p>12 And with Exhibit 44 I'm not even sure where  13 to begin with this one. I understand it was  14 admitted over objection, which I respect. But on  15 voir dire during my objection Mr. Livadas displayed  16 an astonishing lack of knowledge on how W.A.M.  17 tracked and reported client information from 2011 to  18 2013. And he said that there should be transaction  19 records that demonstrate the transactions in Exhibit  20 44 but there are not. They should be there but  21 they're not.</p> <p>22 And in conjunction with that, we have to  23 look at what happened in 2012. Really, the entire  24 basis of their claim is that Mr. Skarpelos had an</p>



<p style="text-align: right;">Page 74</p> <p>1 enormous negative balance of \$153,000 in early 2013,  2 so that when he was credited this money, it went to  3 a positive balance. But there's no evidence --  4 certainly there's not in the 2012 account  5 statement -- and Mr. Livadas, his testimony is,  6 Well, we don't do it unless clients request it. But  7 the only way he could generate an account statement,  8 according to him, is by having transaction records.  9 There has to be something that W.A.M. has that when  10 a client says, I would like an account statement  11 from this year to this year, that W.A.M. can look at  12 the transactions -- and I don't know how they do it  13 when they've got stacks of paper this high organized  14 by transactions -- how do they generate these  15 account statements for a client?  16 So, there should be something somewhere, if  17 this is legitimate, that shows Mr. Skarpelos entered  18 into one or more transactions in 2012 running up an  19 enormous negative balance. And I know Mr. Livadas  20 said, Well, that's really not that big. It's big to  21 me. \$140,000 is a big deficit or debit or  22 deficiency on an account.  23 And you never see anything from Weiser  24 Asset Management to Skarpelos, Mr. Skarpelos saying,</p>	<p style="text-align: right;">Page 75</p> <p>1 Hey, your account is seriously delinquent. There's  2 no records for 2012 and there's also no records for  3 2013, transaction records related to this account  4 statement. Which begs the question, your Honor, How  5 in the world do they generate an account statement  6 showing transactions for 2013 if they don't have the  7 actual transaction records on which they're based?  8 Now, Mr. Nork said something to the effect  9 of either this account statement's legitimate or  10 it's the most coincidental transaction in the  11 history of banking, something to that effect. I  12 don't think it's an unfair inference that this is a  13 fabricated document. This appears to be a  14 fabricated document that attempts to match unrelated  15 transaction records that they believe they had on  16 behalf of Mr. Pedafronimos and they attempted to  17 attribute them to Mr. Skarpelos.  18 If you look at Exhibit 44 and Exhibit 2,  19 W.A.M.'s got different logos and Mr. Livadas does  20 not know when those changed. So, there's an  21 entirety of circumstances surrounding this document,  22 this only document that's the only W.A.M. record of  23 a transactional, slash, specific number related.  24 There's just nothing else. I think that's highly</p>
<p style="text-align: right;">Page 76</p> <p>1 suspicious and I don't think it's outside the realm  2 of possibility that this document was created to  3 match records they had in an attempt to somehow  4 connect this -- connect this to Mr. Skarpelos.  5 And I think one thing that Mr. Livadas  6 testified to in this regard that's really important  7 are The Bahamas' securities regulations that I asked  8 him about. And Mr. Livadas agreed that certain  9 provisions would apply to Weiser Asset Management,  10 and I'd like to read those for the Court. "A  11 registered firm must maintain records that, one,  12 demonstrate compliance with policies and  13 procedures" -- and we haven't seen any policies and  14 procedures but, apparently, they exist at W.A.M. --  15 "Two, identify all transactions conducted on behalf  16 of each client including the parties to the  17 transaction and the terms of the purchase or sale.  18 Three" -- and I think this is a really important one  19 because this is what they should have produced in  20 this case -- "provide an audit trail for client  21 instructions and orders and for each trade  22 transmitted or executed for the account of a client  23 or registered firm and document correspondence with  24 the client."</p>	<p style="text-align: right;">Page 77</p> <p>1 He also agreed with me that a registered  2 firm shall on behalf of its client make a contract  3 note on any sale or purchase of securities on behalf  4 of a client within one day after the transaction was  5 executed. And you may remember, your Honor, I asked  6 him about that. I said, You're claiming the  7 April 2nd transaction happened. Is there a contract  8 note for this? And he waffled and wavered and I  9 think said, Well, there is and I didn't look for it.  10 I can't remember what he said. But the bottom line  11 is it's not in evidence. It's not in evidence, your  12 Honor.  13 They did not produce a contract note or  14 anything else supporting this transaction, which, by  15 Bahamian law they're required to have. They  16 produced absolutely zero transaction records. Only  17 this Exhibit 44, which, based on Mr. Nork's closing  18 argument, is the basis of their entire case. So,  19 with respect to Exhibit 44, your Honor, I just think  20 the contents of it defy belief. And we're talking  21 about at this point W.A.M.'s internal records.  22 But also what they did not produce is a  23 single shred of paper from a third-party financial  24 institution to corroborate any of these</p>

<p style="text-align: right;">Page 78</p> <p>1 transactions. Your Honor, they went through this  2 convoluted, complicated flowchart with arrows  3 pointing different directions and it looks to me  4 like a map of inner London. But what I would say is  5 that whether it's W.A.M., Verdmont, or some other  6 broker dealer -- because I think Mr. Livadas  7 testified he wasn't sure if Verdmont was the broker  8 dealer for this or whether there were others. But  9 there's a connection between W.A.M., Verdmont, the  10 Prime bank, then I believe the Federal Reserve.  11 It's not important other than to say there  12 must have been documents somewhere that existed that  13 would show the audit trail, the flow of money if it  14 went to Mr. Skarpelos or one of his affiliates and  15 they haven't connected those dots. There's no  16 documents to prove this.  17 The next set of exhibits, the range is  18 Exhibit 3 and Exhibits 46 to 58. These are the  19 demand by Weiser Asset Management on October 30th of  20 2013 and then the ensuing discussions among counsel.  21 THE COURT: I didn't look at my watch to  22 see that you have a limited amount of time.  23 MR. ANDERSON: I appreciate that, your  24 Honor. I was looking of my own accord because I</p>	<p style="text-align: right;">Page 79</p> <p>1 promised I'd be done.  2 THE COURT: Don't narrow your argument  3 because you think you have a time constraint.  4 MR. ANDERSON: I'll be able to finish, your  5 Honor.  6 These range of documents involve the  7 attorney discussions involving W.A.M.'s claim to the  8 ownership of the stock. Again, these all reference  9 a July 12th, 2013, contract. None of Mr.  10 Alvarez's letters allege that W.A.M. acquired the  11 stock on April 2nd, 2013. Mr. Walker testified that  12 he had legitimate questions about W.A.M.'s request.  13 He indicated there was no proper presentment, which  14 he defined and said is critically important to  15 performing these types of transactions. He talked  16 about no medallion guarantees or other high-level  17 notary stamps.  18 I think this is really important, on  19 Exhibit 54 NATCO received from Mr. Boutsalis on  20 behalf of Mr. Livadas and his entities a document  21 that didn't have a completed stock power on it. It  22 was blank still as of November 16th, 2015. So, at  23 that point in time, if Weiser Asset Management is  24 the undisputed owner of the stock because of a very,</p>
<p style="text-align: right;">Page 80</p> <p>1 very simple transaction on April 2nd, 2013, why is  2 that stock power not written out in Weiser Asset  3 Management's name and, instead, at some point in  4 time Weiser Capital writes itself in as the buyer of  5 the stock? There's no evidence that Weiser Capital  6 was supposed to be the intermediary.  7 Their argument now is it was Mr. Skarpelos,  8 W.A.M. and some third party. Weiser Capital didn't  9 enter into the picture until Mr. Livadas wrote it in  10 his April 16 declaration -- April 2018 declaration.  11 Sorry. I have to backtrack on that. They wrote  12 Weiser Capital in February of 2016 when Mr. Nork  13 notified Mr. Walker for the first time that Weiser  14 Capital was the buyer and that's why we had the  15 amended complaint that we did.  16 Exhibit 57, another interesting document.  17 This is where Mr. Alvarez sent something to Mr.  18 Simonitsch and the attachments are a power of  19 attorney and a Purchase and Sale Agreement. And Mr.  20 Simonitsch asks for evidence of payment and there's  21 no evidence that that was ever provided to Mr.  22 Simonitsch by Mr. Alvarez. So, again, if the  23 April 2nd transaction actually happened, if that was  24 the legitimate transaction at issue, why didn't Mr.</p>	<p style="text-align: right;">Page 81</p> <p>1 Alvarez send Mr. Simonitsch evidence that the credit  2 had happened on April 2nd? It all adds up to the  3 fact that the April 2nd transaction and Exhibit 44  4 that reflects it are a sham.  5 At the end of day, your Honor, with respect  6 to the records they've provided, W.A.M. is asking  7 the Court to make an enormous inference from the  8 slimmest and most suspect of documents. So, the  9 exhibits that the Court has available in evidence  10 are just not the kind of documents you would see  11 from a legitimate financial institution that was  12 attempting to prove that financial transactions had  13 taken place. Again, it's a highly suspicious claim  14 they're making.  15 Now, regarding witnesses, you heard from  16 Mr. Livadas, you heard from Mr. Skarpelos,  17 Mr. Walker, and Lambros Pedafonimos. I've already  18 discussed some of their testimony in the context of  19 the documents, but there's other points I'd like to  20 make. Mr. Walker no longer has a dog in this fight,  21 never really did, but he is an independent witness.  22 I think his testimony spoke volumes about what is  23 required in the course of a legitimate transaction  24 and what they need to see to feel comfortable to</p>

<p style="text-align: right;">Page 82</p> <p>1 execute their duties under the law.</p> <p>2 And I won't go through everything he said</p> <p>3 but, again, the original stock power, which he never</p> <p>4 got because Mr. Skarpelos has it in his possession,</p> <p>5 the medallion guarantee from someone, especially if</p> <p>6 they don't know who the person is, they need that</p> <p>7 comfort level to say that the person that owns the</p> <p>8 stock actually authorized this stock to leave their</p> <p>9 possession.</p> <p>10 And that's really important here, your</p> <p>11 Honor, because Mr. Skarpelos is the default in this</p> <p>12 case. He's the owner of the stock unless they can</p> <p>13 prove a contract existed by which he somehow was</p> <p>14 divested of it. When Mr. Walker talks about all the</p> <p>15 things that must happen, including an opinion of</p> <p>16 counsel letter or an affiliate or an insider of the</p> <p>17 company, there are requirements under SEC</p> <p>18 regulations that have to be complied with to show</p> <p>19 that this is not only a legitimate transaction but</p> <p>20 that it can be done without violating SEC</p> <p>21 regulations. And W.A.M. in this case or Weiser</p> <p>22 Capital just did not make the proper presentment</p> <p>23 under the law.</p> <p>24 The first witness, your Honor, was Mr.</p>	<p style="text-align: right;">Page 83</p> <p>1 Livadas. He was the first witness out of the gate</p> <p>2 and told us an entirely new theory of the case on</p> <p>3 Monday. He told one story on direct examination,</p> <p>4 but when I confronted repeatedly with his</p> <p>5 deposition, he told a different story on his</p> <p>6 cross-examination. He admitted that with respect to</p> <p>7 Exhibit 30 on cross-examination that he previously</p> <p>8 testified this document was intended to document the</p> <p>9 April 2nd transaction, even though on direct he was</p> <p>10 -- he said it was for an unrelated future sale to</p> <p>11 Chinese investors and admitted to your Honor that he</p> <p>12 submitted this for a purpose other than its intended</p> <p>13 purpose.</p> <p>14 It just doesn't make sense. Submitting a</p> <p>15 document for anti-money-laundering purposes that</p> <p>16 mentions parties that had nothing to do with the</p> <p>17 transaction and that is submitted for something</p> <p>18 other than its intended purpose would seem to me to</p> <p>19 be directly contrary to the anti-money-laundering</p> <p>20 laws, which are honest and upfront transactions.</p> <p>21 Mr. Livadas couldn't keep his entities</p> <p>22 straight and, again, in closing argument they were</p> <p>23 suggesting there was some confusion on his part</p> <p>24 between Weiser Capital and Weiser Asset Management.</p>
<p style="text-align: right;">Page 84</p> <p>1 If the owners of both entities can't keep it</p> <p>2 straight, how in the world would the rest of us</p> <p>3 distinguish between the two? I think it's clear</p> <p>4 from page 228 of his deposition, when I asked him</p> <p>5 what this document was referring to, it says "Weiser</p> <p>6 Capital" in the document, and he said that was</p> <p>7 intended to document the April 2nd transaction which</p> <p>8 Weiser Capital bought the stock.</p> <p>9 The Court recalls when I asked him who owns</p> <p>10 the stock, he paused and it took him some time and</p> <p>11 eventually he said something to the effect of, Well,</p> <p>12 I guess W.A.M. And so, it's hard to keep your story</p> <p>13 straight, I know, when throughout three years it's</p> <p>14 changed a number of times, but coming to this Court</p> <p>15 at this point now and being unsure of who the owner</p> <p>16 is by the gentleman who owns both Weiser Asset</p> <p>17 Management and Weiser Capital speaks loudly about</p> <p>18 his credibility and the believability of his</p> <p>19 testimony. Now, Mr. Livadas also testified that</p> <p>20 W.A.M. had a client file -- I think is what he</p> <p>21 called it -- for Mr. Skarpelos which had the account</p> <p>22 application and identity verification form but not a</p> <p>23 single shred of paper involving anything else</p> <p>24 related to Mr. Skarpelos' account.</p>	<p style="text-align: right;">Page 85</p> <p>1 Mr. Skarpelos testified at length about his</p> <p>2 actions in this case. He described the restricted</p> <p>3 shares he owned, the process he would have to go</p> <p>4 through if he were actually selling them, and if it</p> <p>5 was a legitimate transaction he would involve his</p> <p>6 securities lawyer, Mr. Pinsky, because that's what</p> <p>7 you do when you get close to selling shares of a</p> <p>8 restricted stock. Mr. Pinsky never got involved at</p> <p>9 that point. There's no indication around April 2nd</p> <p>10 or July of 2013 that Mr. Pinsky was reviewing</p> <p>11 documents for Mr. Skarpelos' supposed sale.</p> <p>12 Mr. Skarpelos admits he submitted a W.A.M.</p> <p>13 application but says he didn't intend to authorize</p> <p>14 and did not authorize anyone else to transact on the</p> <p>15 account. He testified he never received any</p> <p>16 account-opening information, never received anything</p> <p>17 from W.A.M., let's just say after the utility bill,</p> <p>18 and there's no emails to confirm that that is</p> <p>19 incorrect.</p> <p>20 Mr. Skarpelos indicated his intent in 2013</p> <p>21 was to sell stock to a strategic investor who would</p> <p>22 not only buy stock, but also infuse capital into the</p> <p>23 company or provide some other strategic advantage to</p> <p>24 a company that was struggling. I don't think there</p>

<p style="text-align: right;">Page 86</p> <p>1 was any dispute that the company was struggling in  2 2013. And Mr. Skarpelos wasn't looking to sell the  3 stock to just anybody including W.A.M. or its  4 third-party buyer. He was looking to sell to  5 someone that he could identify and that who could  6 make commitments to the company that would help  7 resurrect it.</p> <p>8 Mr. Skarpelos testified that he never gave  9 any standing order to W.A.M., to Weiser Capital, or  10 Christos Livadas to sell his stock. So, W.A.M. is  11 claiming pursuant to some account agreement that on  12 April 2nd they sold Mr. Skarpelos' stock pursuant to  13 a standing order given by Mr. Skarpelos. Again,  14 where is that standing order? Mr. Livadas would  15 have this Court believe that, contrary to the  16 identity verification form which suggests that there  17 must be trading authorizations, there must be powers  18 of attorney evidencing the ability to execute on  19 client accounts, there's nothing. And so how can  20 they as a Class 1 broker claim without that  21 authorization that this is a legitimate transaction?  22 There's absolutely nothing simple about it,  23 your Honor. And I think your Honor picked up on  24 this yesterday in argument. Let's assume for a</p>	<p style="text-align: right;">Page 87</p> <p>1 second there was an April 2nd transaction.  2 Weiser Asset Management was not intended to be the  3 buyer and Mr. Skarpelos testified that that was  4 never his intent. Mr. Skarpelos also testified, if  5 he'd reached a deal on the sale of stock, he would  6 have included the new stock certificate number that  7 he had issued but it never got that far. There's no  8 evidence that Mr. Skarpelos ever specified 753 in  9 any of the discussions with Mr. Livadas or with  10 Lambros Pedafronimos. There's no indication he  11 misled them as to the certificate number.</p> <p>12 These are still the same shares whether  13 they're in 753 or 975. They're the same shares that  14 he owned and had the ability to sell. There's no  15 evidence other than account statements, Exhibit 44,  16 that Mr. Skarpelos ever received any money for this  17 purported sale. Mr. Skarpelos denies he did and  18 they have nothing to refute that.</p> <p>19 Mr. Skarpelos testified that the first time  20 he heard of the April 2nd, 2013, transaction was  21 when he saw Exhibit 44 in this lawsuit. Unlike Mr.  22 Livadas, when I asked Mr. Skarpelos who owns the  23 stock, he said without hesitation, I do. Now, Mr.  24 Nork spent a lot of time trying to challenge</p>
<p style="text-align: right;">Page 88</p> <p>1 Mr. Skarpelos' credibility in his closing argument.  2 Mr. Skarpelos admittedly doesn't have the kind of  3 bank records that we would expect in the United  4 States and he explained his reasons why and it's up  5 to your Honor if you believe him or not. But I  6 think the important thing to remember on that issue  7 is it's not Mr. Skarpelos' burden to prove that he  8 wasn't paid or that he was paid. It's W.A.M.'s  9 burden to prove that he was paid for whatever stock  10 he sold. And if they were a legitimate business, as  11 I said earlier, they would have that information.</p> <p>12 Mr. Skarpelos' lack of financial records,  13 personal financial records and his, perhaps, poor  14 business judgment in prior dealings with Mr. Livadas  15 are really not relevant. His lack of records are  16 not his fault. W.A.M.'s lack of records most  17 certainly is W.A.M.'s fault.</p> <p>18 Mr. Pedafronimos, your Honor confirmed the  19 process of a stock restriction as being much more  20 involved in a casual manner than which Weiser  21 claims. He was never aware of Mr. Skarpelos' W.A.M.  22 account being opened. He was never authorized to  23 direct transactions on Mr. Skarpelos' W.A.M.  24 account. He never completed Know Your Customer</p>	<p style="text-align: right;">Page 89</p> <p>1 information forms for W.A.M. for Mr. Skarpelos'  2 account. He discussed that the stock sale  3 conversation in March and April of 2013 prior to  4 Mr. Skarpelos' surgery was very general. No  5 specific figures were discussed and, again, Mr.  6 Livadas never mentioned anything about an April 2nd  7 transaction.</p> <p>8 I'd like to briefly address the Exhibit 59  9 that Weiser is using to, essentially, say that  10 Mr. Pedafronimos was asking for money for Tom's  11 heart surgery and that document does have in the  12 subject line "Quadruple bypass." I think  13 Mr. Pedafronimos said, I don't know why I would have  14 written that and included the account information,  15 but that's what it says. But if you look at Exhibit  16 59 just above the original email from  17 Mr. Pedafronimos you can see that Mr. Livadas  18 changed the subject line from "Quadruple bypass" to  19 "Transfer request for quadruple bypass," and he puts  20 in a specific dollar amount, \$20,000 that  21 Mr. Pedafronimos did not include in his email. And  22 then he's adding that Tom had a heart attack, when  23 Mr. Skarpelos clearly didn't have a heart attack.  24 And so there are suggestions that he's</p>

<p style="text-align: right;">Page 90</p> <p>1 adding information or changing information but  2 there's nowhere specific where Mr. Pedafonimos  3 says, I want \$20,000 for Tom.  4       So, I think with respect to the declaratory  5 relief claim, your Honor, because it is based and  6 has been based throughout this case on a contract,  7 if there is no valid contract, there's no claim for  8 declaratory relief that W.A.M., Weiser Bahamas, or  9 any other W.A.M. entity or Mr. Livadas is entitled  10 to ownership of stock. And because of the nature of  11 the claims, which is all contract-based, their  12 contract claims fail as well. I think if you look  13 at their crossclaim, they're asking the Court for  14 damages in those two claims for relief, the breach  15 of contract and the breach of the Implied Covenant  16 of Good Faith and Fair Feeling. They're not asking  17 for specific performance. That remedy is never  18 requested. They don't say, you know, Tom breached  19 the contract, we want it specifically performed.  20 They ask for money damages.  21       As the Court pointed out in this case, they  22 don't have proof of any money damages related to any  23 contract, so not only do we question the validity of  24 the formation of either contract, we point out that</p>	<p style="text-align: right;">Page 91</p> <p>1 there's absolutely no evidence of damages of either,  2 nor is there any request for remedy of specific  3 performance enforcing a contract to deliver the  4 shares.  5       I want to touch on a couple affirmative  6 defenses. One is estoppel. And I think if you look  7 at the July circumstances, you've got Mr. Livadas  8 leading Mr. Skarpelos and Mr. Pedafonimos to  9 believing he's working on their team and ultimately  10 stock would be transferred to a third party. I  11 talked about this earlier. He then goes on to  12 assign the stock to himself in an apparent attempt  13 to grab the stock and gain a windfall in the  14 transaction. I think the elements of estoppel would  15 apply in that situation to prevent him from arguing  16 that based on the July contract.  17       I also discussed briefly the illegality  18 defense and I think I referenced this in my trial  19 statement. Statute law of Bahamas, Chapter 363,  20 Section 63.1 states that "a registered firm shall  21 not engage in a transaction by means of  22 manipulative, deceptive, or fraudulent practice or  23 activity." And based on the new theory we heard at  24 trial, I was referring that to the July contract.</p>
<p style="text-align: right;">Page 92</p> <p>1 But if we're talking about the April transaction, I  2 think it would apply again. That's exactly what  3 W.A.M. is doing. They induced him to leave stock  4 certificates, never confirmed his account opening,  5 apparently conducted transactions on his behalf  6 without authorized parties or signatures in apparent  7 violations of anti-money-laundering laws.  8       There's no records whatsoever at all to  9 suggest that Mr. Skarpelos really had a negative  10 balance. They executed a substantial trade without  11 any documentation to demonstrate it and they,  12 apparently, don't report to their clients as  13 required by Bahamian securities laws. Mr. Livadas  14 admitted that he hadn't reported this lawsuit  15 between Weiser Asset Management and its client to  16 securities regulators. So, I would argue, your  17 Honor, if somehow the Court finds that there's a  18 legitimate contract between Mr. Skarpelos and W.A.M.  19 for the sale of stock to W.A.M., that it's illegal.  20       In conclusion, your Honor, the three claims  21 that Weiser has asserted are really all based on a  22 contract that doesn't exist, hasn't been pleaded and  23 hasn't been proven. I just want to briefly address  24 some of the comments in Mr. Nork's opening that I</p>	<p style="text-align: right;">Page 93</p> <p>1 didn't get to yet. We talked a little bit earlier  2 about fair notice and I think what he was suggesting  3 in citing some of these authorities is that we  4 inadvertently put the wrong date in there, that the  5 case he cited, I think, was suggesting that somehow  6 an inadvertent date was put in there.  7       I don't think we're talking about  8 inadvertence, your Honor. I think we're talking  9 about a story being changed because it didn't work  10 the first time. When they encountered a problem,  11 the story changed. I don't think that Mr. Alvarez's  12 letters to the filing of the answer and crossclaim  13 that July 2013 was an inadvertent date. I think  14 they figured out somehow that they couldn't make the  15 July transaction work for them because it has no  16 mention of an April 2nd transaction, no evidence of  17 prior payment, and it's got an integration clause  18 that would foreclose that argument. I think they  19 had to come up with a new theory at trial and that's  20 exactly what they did.  21       One issue I want to touch on briefly is the  22 statement by Mr. Nork -- and I think Mr. Livadas  23 testified to it -- is that the stock power in July  24 of 2013 and the Purchase and Sale Agreement were</p>

<p style="text-align: right;">Page 94</p> <p>1 unrelated. I think he said in closing they were  2 sent separately. I would just direct the Court's  3 attention to Exhibit 31 and 33 where  4 Mr. Pedafronimos sends two attachments in Exhibit 31  5 which indicate that both the Purchase and Sale  6 Agreement and notarized documents are being sent  7 together and Exhibit 33, which actually attaches the  8 two documents, and they're sent together again.  9 So, whatever he thinks he intended by way  10 of this transaction, my client and Mr. Pedafronimos  11 testified they were related to a July transaction.  12 They weren't being sent to facilitate the completion  13 of an April 2nd deal. One thing to clear up, Mr.  14 Nork was talking about Mr. Skarpelos' prior sales  15 where he wasn't paid and he said that Mr. Skarpelos  16 reported those to the SEC that he both conducted the  17 transaction and was paid.  18 Mr. Skarpelos did not testify to that. He  19 testified that he submitted the transaction that he  20 had sold the stock but he never represented to the  21 SEC that he was actually paid for those  22 transactions. And when his memory was refreshed on  23 whether he'd ever heard of "Weiser Capital," Mr.  24 Nork showed him a 165-page SEC filing from 2011 or</p>	<p style="text-align: right;">Page 95</p> <p>1 2013 that mentions somewhere in the middle that  2 Weiser Capital Limited is not a party to this  3 lawsuit. I don't think that was an effective  4 impeachment of Mr. Skarpelos.  5 Mr. Nork said that the Court should find by  6 at least 51 percent that Mr. Livadas' version of  7 events is the one that happened. I wrote down a  8 note, "Which version," because the Court's heard a  9 lot of them over the years. And the one that he's  10 being told now created for the purpose of this trial  11 is just simply not believable.  12 So, your Honor, in sum, Mr. Skarpelos is  13 the owner of this stock. Weiser Asset Management,  14 Weiser Capital are not the owners of this stock and  15 no breach of contract claim has been proven by  16 either one of those entities. Mr. Skarpelos is,  17 was, always has been the owner of this stock, and  18 the Court, we would request, enter judgment to that  19 effect, that Mr. Skarpelos is the undisputed  20 rightful owner of the stock at issue.  21 And I think I answered your Honor's  22 question earlier about, Can the Court fashion  23 whatever relief it would like under declaratory  24 relief. I didn't have a chance to read the case. I</p>
<p style="text-align: right;">Page 96</p> <p>1 think there's broad latitude for the Court to do  2 what it thinks is fair, but i think it's tempered by  3 it has to be appropriate relief. And what I would  4 argue to your Honor is that it has to be based on  5 something in evidence that demonstrates that the  6 relief the Court is designing is appropriate and  7 fair. And, again, with respect to W.A.M.'s claim  8 giving them ownership of stock would not be fair or  9 appropriate. I think the Court indicated yesterday,  10 depending on the stock price increase, it would be a  11 financial windfall.  12 The only other remedy I could envision is  13 something to do with the alleged breach of the  14 April 2nd transaction, which is knowing what W.A.M.  15 incurred to remedy this alleged breach by Mr.  16 Skarpelos. And all the Court has is the vague  17 testimony of Mr. Livadas who displayed a lack of  18 knowledge as to what W.A.M. actually did. He said  19 some shorting, there was some acquiring other stock.  20 But there's no evidence of that in this case and  21 they didn't plead that, it's not at issue, and so I  22 would argue to the Court there really is no  23 appropriate remedy, no appropriate relief that could  24 be granted in favor of Weiser Capital and ask that</p>	<p style="text-align: right;">Page 97</p> <p>1 judgment be entered in favor of Mr. Skarpelos in its  2 entirety. Thank you.  3 THE COURT: Thank you, Mr. Anderson.  4 Mr. Nork, we're going to be in recess until  5 2:00.  6 MR. NORK: Actually, your Honor, I might be  7 able to short-circuit that.  8 THE COURT: Okay.  9 MR. NORK: I've given it a great deal of  10 thought and I think it was borne out by my closing  11 statement the facts and circumstances regarding the  12 April 2013 transaction. They affect the declaratory  13 relief claim, they affect the breach of contract  14 claim, they affect the breach of the covenant of  15 good faith and fair dealing claim, and they affect  16 the position of Weiser as an interpleading  17 defendant. They're all inextricably intertwined and  18 I struggled to try to find a way to separate breach  19 of contract, breach of the covenant from all the  20 rest of the circumstances, your Honor, and I was  21 unable to because I think they're all interrelated.  22 And, as a result, I will rely upon my initial  23 closing argument.  24 THE COURT: Thank you. I appreciate that.</p>

<p style="text-align: right;">Page 98</p> <p>1 I agree with you it would be a tightrope to walk.  2 I'm not quite sure how you would it. It might be  3 walking on a razor's edge. But I wanted to give you  4 the opportunity, Mr. Nork. I appreciate your  5 thoughts on the issue.  6 And so the court will take this matter  7 under submission. I would like to wish both Mr.  8 Livadas and Mr. Skarpelos safe travels. And if I  9 don't see you on Wednesday at 3:00, or if I do, then  10 I'll wish you safe travels then.  11 This matter will be taken under submission.  12 I will see the parties on Wednesday at 3:00 p.m. and  13 put the findings of fact, conclusions of law, and  14 the order on the record.  15 Have a good weekend, gentlemen. Thank you.  16 Court is in recess.  17 (End of proceedings at 11:47 a.m.)  18 -o0o-  19  20  21  22  23  24</p>	<p style="text-align: right;">Page 99</p> <p>1 STATE OF NEVADA )  2 ) SS.  3 COUNTY OF WASHOE )  4 I, CHRISTINA MARIE AMUNDSON, official reporter  5 of the Second Judicial District Court of the State  6 of Nevada, in and for the County of Washoe, do  7 hereby certify:  8 That as such reporter, I was present in  9 Department No. 10 of the above court on February 1,  10 2019, at the hour of 9:17 a.m. of said day, and I  11 then and there took verbatim stenotype notes of the  12 proceedings had and testimony given therein in the  13 case of NATCO, Plaintiff, v. WEISER ASSET  14 MANAGEMENT, Defendant, Case CV15-02259.  15 That the foregoing transcript is a true and  16 correct transcript of my said stenotype notes so  17 taken as aforesaid, and is a true and correct  18 statement of the proceedings had and testimony given  19 in the above-entitled action to the best of my  20 knowledge, skill and ability.  21  22 DATED: At Reno, Nevada, on the 24th day of March  23 2020.  24 /S/ Christina Marie Amundson, CCR #641    <hr/> Christina Marie Amundson, CCR #641</p>
<p style="text-align: right;">Page 100</p> <p>1 HEALTH INFORMATION PRIVACY &amp; SECURITY: CAUTIONARY NOTICE  2 Litigation Services is committed to compliance with applicable federal  3 and state laws and regulations ("Privacy Laws") governing the  4 protection and security of patient health information. Notice is  5 hereby given to all parties that transcripts of depositions and legal  6 proceedings, and transcript exhibits, may contain patient health  7 information that is protected from unauthorized access, use and  8 disclosure by Privacy Laws. Litigation Services requires that access,  9 maintenance, use, and disclosure (including but not limited to  10 electronic database maintenance and access, storage, distribution/  11 dissemination and communication) of transcripts/exhibits containing  12 patient information be performed in compliance with Privacy Laws.  13 No transcript or exhibit containing protected patient health  14 information may be further disclosed except as permitted by Privacy  15 Laws. Litigation Services expects that all parties, parties'  16 attorneys, and their HIPAA Business Associates and Subcontractors will  17 make every reasonable effort to protect and secure patient health  18 information, and to comply with applicable Privacy Law mandates,  19 including but not limited to restrictions on access, storage, use, and  20 disclosure (sharing) of transcripts and transcript exhibits, and  21 applying "minimum necessary" standards where appropriate. It is  22 recommended that your office review its policies regarding sharing of  23 transcripts and exhibits - including access, storage, use, and  24 disclosure - for compliance with Privacy Laws.  25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>	

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